Tab 1	**CS/SB 24** by **GO, Rouson (CO-INTRODUCERS) Davis, Osgood, Burgess, Pizzo, Jones, Garcia, Torres, Stewart**; (Identical to CS/H 00021) Dozier School for Boys and Okeechobee School Victim Compensation Program

825836	A	S	RCS	FP, Rouson	btw L.111 - 112:	02/28 07:40 AM

Tab 2	**CS/CS/SB 26** by **ACJ, GO, Rouson (CO-INTRODUCERS) Davis, Pizzo**; (Similar to CS/CS/H 00023) Public Records/Dozier School for Boys and Okeechobee School Victim Compensation Program

Tab 3	**CS/SB 106** by **AEG, Jones**; (Similar to H 00035) Acceptance of Cash Payments by Businesses

Tab 4	**SB 436** by **Grall**; (Similar to CS/H 00415) Pregnancy and Parenting Resources Website

Tab 5	**CS/CS/SB 536** by **AHS, CF, Garcia**; (Compare to CS/CS/CS/H 01061) Community-based Child Welfare Agencies

736738	D	S	RCS	FP, Garcia	Delete everything after	02/28 11:49 AM

Tab 6	**CS/SB 564** by **CF, Garcia (CO-INTRODUCERS) Hooper, Book, Rouson**; (Similar to H 00631) Young Adult Aftercare Services

645594	A	S	RCS	FP, Garcia	Delete L.18 - 35:	02/28 11:55 AM

Tab 7	**SB 590** by **Burgess (CO-INTRODUCERS) Perry**; (Compare to CS/CS/H 00537) Music-based Supplemental Content to Accelerate Learner Engagement and Success Pilot Program

Tab 8	**CS/SB 602** by **EN, DiCeglie**; (Identical to CS/H 00321) Release of Balloons

624736	A	S	RCS	FP, Hutson	Delete L.48 - 69:	02/28 08:03 AM
~~201442~~	A	S	WD	FP, DiCeglie	Delete L.48 - 50:	02/28 08:03 AM

Tab 9	**CS/CS/SB 718** by **ACJ, CJ, Collins (CO-INTRODUCERS) Hooper**; (Similar to CS/CS/H 00231) Exposures of First Responders to Fentanyl and Fentanyl Analogs

936092	A	S	RCS	FP, Collins	Delete L.54 - 58.	02/28 08:05 AM

Tab 10	**SB 732** by **Powell**; (Similar to H 00737) Theft from Nonprofit Organizations

Tab 11	**SB 958** by **Martin (CO-INTRODUCERS) Perry**; (Similar to CS/H 00505) Local Government Employees

Tab 12	**CS/CS/SB 1006** by **AEG, RI, Perry**; (Similar to CS/CS/H 01007) Nicotine Products and Dispensing Devices

Tab 13	**CS/SB 1036** by **CJ, Ingoglia**; (Identical to CS/H 01449) Reclassification of Criminal Penalties

269496	A	S	RS	FP, Ingoglia	Delete L.26 - 39:	02/28 12:27 PM
360462	AA	S	RS	FP, Ingoglia	Delete L.23 - 25:	02/28 12:27 PM
350306	SA	S	RCS	FP, Ingoglia	Delete L.24 - 39:	02/28 12:27 PM

Tab 14	**CS/CS/SB 1178** by **AEG, RI, Bradley (CO-INTRODUCERS) Pizzo, Osgood, Rodriguez, Garcia**; (Similar to CS/CS/CS/H 01021) Community Associations

863108	D	S	RCS	FP, Bradley	Delete everything after	02/28 11:57 AM
595242	AA	S	RCS	FP, Bradley	Delete L.3506 - 3507:	02/28 11:57 AM

Tab 15	**SB 1220** by **Martin**; (Similar to CS/CS/H 01171) Schemes to Defraud

Tab 16	**CS/CS/SB 1226** by **ATD, TR, DiCeglie**; (Similar to CS/CS/CS/1ST ENG/H 01301) Department of Transportation

584592	A	S	RCS	FP, DiCeglie	Delete L.121 - 309:	02/28 12:01 PM
525088	AA	S	RCS	FP, DiCeglie	btw L.117 - 118:	02/28 12:01 PM

Tab 17	**SB 1256** by **Martin**; (Similar to CS/H 00135) Voter Registration Applications

949112	A	S	RCS	FP, Martin	Delete L.30 - 128:	02/28 12:30 PM

Tab 18	**CS/CS/SB 1264** by **AED, ED, Collins (CO-INTRODUCERS) Rodriguez, Harrell, Avila**; (Similar to CS/CS/H 01349) History of Communism

Tab 19	**CS/SB 1360** by **AEG, Gruters**; (Identical to CS/CS/H 01565) Florida Red Tide Mitigation and Technology Development Initiative

Tab 20	**CS/CS/SB 1380** by **AHS, TR, Hutson**; (Compare to CS/CS/H 01673) Transportation Services for Persons with Disabilities and the Transportation Disadvantaged

Tab 21	**CS/SB 1432** by **CF, Book**; Commercial Sexual Exploitation of Children

Tab 22	**CS/SB 1436** by **AEG, Burton**; (Similar to CS/H 01347) Consumer Finance Loans

Tab 23	**SB 1448** by **Gruters**; (Similar to CS/H 01541) Transparency in Social Media

Tab 24	**SB 1464** by **Calatayud**; (Similar to CS/CS/H 01363) Traffic Enforcement

575736	A	S	RCS	FP, Calatayud	Delete L.41 - 120:	02/28 08:13 AM

Tab 25	**CS/CS/SB 1486** by **AHS, CF, Collins**; (Similar to CS/CS/CS/1ST ENG/H 01083) Permanency for Children

Tab 26	**CS/CS/SB 1582** by **AHS, HP, Rodriguez**; (Compare to CS/CS/H 01441) Department of Health

922552	A	S	RCS	FP, Rodriguez	btw L.755 - 756:	02/28 12:34 PM

Tab 27	**SB 1600** by **Collins**; (Similar to CS/CS/H 01273) Interstate Mobility

947630	A	S	RCS	FP, Collins	Delete L.118 - 721:	02/28 12:37 PM

Tab 28	**CS/SB 1622** by **BI, Trumbull**; (Similar to CS/CS/H 01611) Insurance

199358	A	S	RCS	FP, Trumbull	Delete L.177 - 1245:	02/28 12:03 PM

Tab 29	**CS/CS/SB 1624** by **AEG, RI, Collins**; (Similar to CS/CS/H 01645) Energy Resources

~~917948~~	A	S	WD	FP, DiCeglie	btw L.388 - 389:	02/28 08:21 AM

Tab 30	**SB 1640** by **Collins**; (Compare to H 07089) Payments for Health Care Services

233008	A	S	RCS	FP, Collins	btw L.527 - 528:	02/28 12:04 PM

Tab 31	**CS/SB 1656** by **ACJ, Martin**; (Identical to CS/H 01545) Child Exploitation Offenses

722368	D	S	RCS	FP, Martin	Delete everything after	02/28 07:50 AM
~~133040~~	AA	S	WD	FP, Jones	btw L.30 - 31:	02/28 07:50 AM

Tab 32	**CS/CS/SB 1690** by **ACJ, CJ, Yarborough (CO-INTRODUCERS) Perry**; (Similar to CS/H 01379) Human Trafficking

Tab 33	**CS/SB 1716** by **BI, Boyd**; (Similar to CS/CS/H 01503) Citizens Property Insurance Corporation

443848	A	S	RCS	FP, Boyd	Delete L.708 - 2925:	02/28 12:39 PM
302782	A	S	RCS	FP, Rodriguez	Delete L.2949:	02/28 12:39 PM

Tab 34	**SB 1784** by **Grall**; (Similar to CS/CS/H 07021) Mental Health and Substance Abuse

132348	D	S	RCS	FP, Grall	Delete everything after	02/28 12:42 PM

Tab 35	**CS/SB 7042** by **AEG, GO (CO-INTRODUCERS) Rodriguez**; (Similar to CS/CS/H 01331) Commodities Produced by Forced Labor

368128	A	S	RCS	FP, Avila	Delete L.145 - 155:	02/28 12:46 PM

Tab 36	**CS/HB 1317** by **CIS, Duggan (CO-INTRODUCERS) Fine, Holcomb, Leek, López, J., Rizo**; (Similar to CS/S 01016) Patriotic Organizations

231634	D	S	FAV	FP, Wright	Delete everything after	02/28 08:40 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

FISCAL POLICY
Senator Hutson, Chair
Senator Stewart, Vice Chair

MEETING DATE: Tuesday, February 27, 2024
TIME: 9:00 a.m.—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Hutson, Chair; Senator Stewart, Vice Chair; Senators Albritton, Berman, Boyd, Burton, Calatayud, Collins, DiCeglie, Garcia, Jones, Mayfield, Osgood, Rodriguez, Simon, Thompson, Torres, Trumbull, Wright, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 24** Governmental Oversight and Accountability / Rouson (Identical CS/H 21, Compare CS/CS/H 23, Linked CS/CS/S 26)	Dozier School for Boys and Okeechobee School Victim Compensation Program; Establishing the Dozier School for Boys and Okeechobee School Victim Compensation Program within the Department of Legal Affairs; requiring the department to accept and process applications for the payment of compensation claims under the program; requiring the department to provide specified notice of the program; requiring the department, subject to the appropriation of funds for that purpose, to pay a specified compensation amount to approved applicants, etc. GO 02/06/2024 Fav/CS ACJ 02/20/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 20 Nays 0
2	**CS/CS/SB 26** Appropriations Committee on Criminal and Civil Justice / Governmental Oversight and Accountability / Rouson (Similar CS/CS/H 23, Compare CS/H 21, Linked CS/S 24)	Public Records/Dozier School for Boys and Okeechobee School Victim Compensation Program; Providing an exemption from public records requirements for the personal identifying information in an application submitted to the Department of Legal Affairs by, or on behalf of, a person seeking compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program; providing exceptions; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 02/06/2024 Fav/CS ACJ 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 20 Nays 0
3	**CS/SB 106** Appropriations Committee on Agriculture, Environment, and General Government / Jones (Similar H 35)	Acceptance of Cash Payments by Businesses; Requiring certain businesses to accept cash payments for certain transactions; authorizing a business to satisfy such requirements by placing a cash-to-card kiosk at the business location for customers to make payments; prohibiting such businesses from charging a fee or placing conditions on acceptance of such cash payments, etc. CM 12/05/2023 Favorable AEG 01/17/2024 Fav/CS FP 02/27/2024 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 436** Grall (Similar CS/H 415)	Pregnancy and Parenting Resources Website; Requiring the Department of Health, in consultation with the Department of Children and Families and the Agency for Health Care Administration, to maintain a website that provides information and links to certain pregnancy and parenting resources; requiring each department and the agency to provide a clear and conspicuous link to the website on their respective websites; requiring the Department of Health to contract with a third party to develop the website by a specified date, etc. HP 01/23/2024 Favorable AHS 02/08/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 13 Nays 6
5	**CS/CS/SB 536** Appropriations Committee on Health and Human Services / Children, Families, and Elder Affairs / Garcia (Compare CS/CS/CS/H 1061)	Community-based Child Welfare Agencies; Revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; requiring the lead agency's board of directors to disclose any known, actual, or potential conflicts of interest; revising community-based care lead agencies duties to include compliance with regular, independent auditing; revising requirements for lead agency practices in the procurement of commodities and contractual services, etc. CF 01/17/2024 Fav/CS AHS 02/13/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0
6	**CS/SB 564** Children, Families, and Elder Affairs / Garcia (Similar H 631)	Young Adult Aftercare Services; Revising eligibility requirements for aftercare services for certain young adults; authorizing the Department of Children and Families to distribute federal funds to eligible young adults in certain circumstances, etc. CF 01/10/2024 Fav/CS AHS 01/17/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0
7	**SB 590** Burgess (Compare CS/CS/H 537)	Music-based Supplemental Content to Accelerate Learner Engagement and Success Pilot Program; Creating the pilot program within the Department of Education; providing requirements for the pilot program; providing funding requirements, subject to legislative appropriation; requiring the College of Education at the University of Florida to evaluate the pilot program's effectiveness and annually share its findings with the Department of Education and the Legislature, etc. ED 01/10/2024 Favorable AED 01/17/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 602** Environment and Natural Resources / DiCeglie (Identical CS/H 321)	Release of Balloons; Revising a prohibition on the release of certain balloons to delete a specified timeframe and number of balloons; deleting an exemption from such prohibition for certain biodegradable or photodegradable balloons; providing that a person who violates the prohibition commits the noncriminal infraction of littering, etc. EN 01/10/2024 Fav/CS CA 01/22/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 18 Nays 0
9	**CS/CS/SB 718** Appropriations Committee on Criminal and Civil Justice / Criminal Justice / Collins (Similar CS/CS/H 231)	Exposures of First Responders to Fentanyl and Fentanyl Analogs; Providing criminal penalties for adults who, in the course of unlawfully possessing specified controlled substances, recklessly expose a first responder to such substances and an overdose or serious bodily injury of the first responder results; providing a defense; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of law of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose, etc. CJ 01/23/2024 Fav/CS ACJ 02/13/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 18 Nays 0
10	**SB 732** Powell (Similar H 737)	Theft from Nonprofit Organizations; Providing for the reclassification of certain theft offenses of specified amounts from nonprofit organizations; requiring in certain cases that the judge require restitution and community service in addition to any fine or sentence imposed, etc. CJ 01/16/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 19 Nays 0
11	**SB 958** Martin (Similar CS/H 505, Compare CS/CS/CS/H 1083, CS/CS/S 1486)	Local Government Employees; Revising the base salary used to calculate the compensation of county tax collectors; defining the term “tax collector employee”; providing that tax collector employees are eligible to receive specified monetary benefits from the state for adopting children within the child welfare system; revising the base salary used to calculate the compensation of district school superintendents, etc. CA 01/22/2024 Favorable AHS 02/20/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 20 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**CS/CS/SB 1006** Appropriations Committee on Agriculture, Environment, and General Government / Regulated Industries / Perry (Similar CS/CS/H 1007)	Nicotine Products and Dispensing Devices; Requiring nicotine product manufacturers who sell nicotine dispensing products in this state to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each dispensing device sold within this state which meets certain criteria; providing penalties for certain violations by manufacturers; prohibiting the sale, shipment, or distributing of certain nicotine dispensing devices from being sold for retail sale in this state; providing criminal penalties for the unlawful sale or dealing of unlisted nicotine dispensing devices; providing for the seizure and destruction of unlawful nicotine dispensing devices in accordance with the Florida Contraband Forfeiture Act, etc. RI 02/05/2024 Fav/CS AEG 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 18 Nays 1
13	**CS/SB 1036** Criminal Justice / Ingoglia (Identical CS/H 1449)	Reclassification of Criminal Penalties; Requiring reclassification of the penalty for the commission of a new felony committed by a person who unlawfully reenters the United States, and while remaining unlawfully present, after having been deported or removed from the United States under federal immigration proceedings for committing a felony, or who has departed the United States while such an order of deportation or removal was outstanding; defining the term “transnational crime organization”; authorizing reclassification of the penalty for any misdemeanor or felony offense if the commission of such offense was for specified purposes, etc. CJ 01/30/2024 Fav/CS ACJ 02/13/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 18 Nays 1
14	**CS/CS/SB 1178** Appropriations Committee on Agriculture, Environment, and General Government / Regulated Industries / Bradley (Similar CS/CS/CS/H 1021)	Community Associations; Requiring community associations or successor community association managers and management firms to return official records of an association within a specified period following termination of a contract; requiring community association managers and management firms to provide a written disclosure of certain conflicts of interest to the association’s board; providing criminal penalties for any officer, director, or manager of an association who knowingly solicits, offers to accept, or accepts a kickback; authorizing, rather than requiring, certain hurricane protection specifications; specifying when the cost of installation of hurricane protection is not a common expense, etc. RI 01/22/2024 Fav/CS AEG 02/13/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 1220** Martin (Similar CS/CS/H 1171)	Schemes to Defraud; Providing for the reclassification of certain scheme-to-defraud offenses committed against persons 65 years of age or older or persons with certain disabilities; authorizing a person whose image or likeness is used without his or her consent in a scheme to defraud to file a civil action for damages, etc. CJ 01/23/2024 Favorable ACJ 02/13/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 19 Nays 0
16	**CS/CS/SB 1226** Appropriations Committee on Transportation, Tourism, and Economic Development / Transportation / DiCeglie (Similar CS/CS/CS/H 1301)	Department of Transportation; Revising the list of areas of program responsibility within the Department of Transportation; requiring that a specified amount of recurring funds from the State Transportation Trust Fund be made available for the Intermodal Logistics Center Infrastructure Support Program; requiring a governmental entity that proposes certain projects to conduct a traffic study; extending the length of time before which an inactive prepaid toll account becomes unclaimed property, etc. TR 02/06/2024 Fav/CS ATD 02/20/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0
17	**SB 1256** Martin (Similar CS/H 135)	Voter Registration Applications; Revising the information that the uniform statewide voter registration application must be designed to elicit; providing an exception to a requirement that certain voter registration applicants must be registered without party affiliation; requiring the Department of Highway Safety and Motor Vehicles to notify certain individuals of certain information; requiring a driver license examiner to make specified inquiries, etc. EE 02/05/2024 Favorable ATD 02/20/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 20 Nays 0
18	**CS/CS/SB 1264** Appropriations Committee on Education / Education Pre-K -12 / Collins (Similar CS/CS/H 1349)	History of Communism; Requiring instruction in public schools on the history of communism; creating the Institute for Freedom in the Americas at Miami Dade College; renaming the Adam Smith Center for the Study of Economic Freedom as the Adam Smith Center for Economic Freedom; requiring the Department of State, in collaboration with the Department of Education, to consult with stakeholders to provide a recommendation to the Legislature by a specified date for the creation of a museum of the history of communism, etc. ED 02/06/2024 Fav/CS AED 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 13 Nays 6

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**CS/SB 1360** Appropriations Committee on Agriculture, Environment, and General Government / Gruters (Identical CS/CS/H 1565)	Florida Red Tide Mitigation and Technology Development Initiative; Requiring the initiative to develop recommendations for deployment of certain technologies and approaches and submit a report to the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, and certain state agencies; requiring the department to submit an evaluation regarding the technologies and approaches to Mote Marine Laboratory within a specified time period and amend regulatory or permitting processes and expedite regulatory reviews under certain circumstances, etc. EN 01/17/2024 Favorable AEG 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 20 Nays 0
20	**CS/CS/SB 1380** Appropriations Committee on Health and Human Services / Transportation / Hutson (Compare CS/CS/H 1673)	Transportation Services for Persons with Disabilities and the Transportation Disadvantaged; Revising membership of the Commission for the Transportation Disadvantaged and qualifications therefor; revising the duties of the commission; providing responsibilities of a transportation service provider with respect to training of certain drivers, application-based and smartphone-based ride booking and vehicle tracking services, maintenance and upgrading of all technology-based services, and the provision of pre-booking and on-demand services for paratransit service users; requiring that reports of adverse incidents be submitted to the Agency for Persons with Disabilities and the Department of Transportation, etc. TR 02/06/2024 Fav/CS AHS 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 19 Nays 0
21	**CS/SB 1432** Children, Families, and Elder Affairs / Book	Commercial Sexual Exploitation of Children; Requiring the Department of Children and Families to include individual-level child placement assessment data in its annual report to the Legislature on the commercial sexual exploitation of children; requiring the department to provide the Legislature with individual-level child placement assessment data in a certain format, etc. CF 01/30/2024 Fav/CS AHS 02/08/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/SB 1436** Appropriations Committee on Agriculture, Environment, and General Government / Burton (Similar CS/H 1347)	Consumer Finance Loans; Defining the term "branch"; prohibiting a person from operating a branch of a business making consumer finance loans before obtaining a license from the Office of Financial Regulation; specifying application fees for branch licenses; requiring licensees offering an assistance program to borrowers after a federally declared disaster to send a specified notice to the office within a certain timeframe; requiring certain licensees to suspend specified actions for a certain timeframe after a federally declared disaster, etc. BI 01/22/2024 Favorable AEG 02/08/2024 Temporarily Postponed AEG 02/13/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 13 Nays 6
23	**SB 1448** Gruters (Similar CS/H 1541)	Transparency in Social Media; Designating the "Transparency in Social Media Act"; requiring foreign-adversary-owned entities operating social media platforms in the state to publicly disclose specified information in a certain manner; requiring foreign-adversary-owned entities operating social media platforms to implement a user verification system for certain entities, etc. CM 01/30/2024 Favorable ACJ 02/20/2024 Favorable FP 02/27/2024 Favorable	Favorable Yeas 20 Nays 0
24	**SB 1464** Calatayud (Similar CS/CS/H 1363)	Traffic Enforcement; Providing that provisions exempting the purchase of commodities or contractual services from competitive bidding requirements do not apply to contracts for certain camera systems; prohibiting certain camera systems or components thereof constructed by a Chinese manufacturer from being used for traffic enforcement in this state; requiring a county or municipality to enact an ordinance to authorize placement or installation of traffic infraction detectors; requiring approval by the governing body at a regular or special meeting before contracting or renewing a contract to place or install traffic infraction detectors, etc. TR 02/06/2024 Favorable ATD 02/20/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 18 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/CS/SB 1486** Appropriations Committee on Health and Human Services / Children, Families, and Elder Affairs / Collins (Similar CS/CS/CS/H 1083, Compare CS/H 505, H 559, S 958, S 2518)	Permanency for Children; Requiring the Department of Children and Families to conduct a criminal history records check of certain persons; authorizing specified persons to initiate a proceeding if both parents of a child are deceased or the last known living parent is deceased and a legal custodian has not been appointed for the child through a probate or guardianship proceeding; authorizing certain persons to remove a child from a court-ordered placement under certain circumstances, etc. CF 01/17/2024 Temporarily Postponed CF 01/23/2024 Fav/CS AHS 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 19 Nays 0
26	**CS/CS/SB 1582** Appropriations Committee on Health and Human Services / Health Policy / Rodriguez (Compare CS/CS/H 1441, H 1497, H 7085, S 1300, S 7070)	Department of Health; Exempting environmental health technicians from certain certification requirements under certain circumstances; creating the Andrew John Anderson Pediatric Rare Disease Grant Program within the department for a specified purpose; providing that any health care practitioner present at a birth or responsible for primary care during the neonatal period has the primary responsibility of administering certain screenings; revising hearing loss screening requirements to include infants and toddlers; requiring the department to grant certain applicants 90 days to cure deficiencies with their medical marijuana treatment center license applications pursuant to a specified errors and omissions process, etc. HP 02/06/2024 Fav/CS AHS 02/20/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0
27	**SB 1600** Collins (Similar CS/CS/H 1273, H 1381, Compare CS/CS/H 1549)	Interstate Mobility; Requiring the respective boards of occupations, or the Department of Business and Professional Regulation if there is no board, to allow licensure by endorsement if the applicant meets certain criteria; requiring applicants of professions that require fingerprints for criminal history checks to submit such fingerprints before the board or department issues a license by endorsement; requiring the department, and authorizing the board, to review the results of the criminal history checks according to specific criteria to determine if the applicants meet the requirements for licensure; requiring the applicable health care regulatory boards, or the Department of Health if there is no board, to issue a license or certificate to applicants who meet specified conditions, etc. HP 01/23/2024 Favorable RI 01/29/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**CS/SB 1622** Banking and Insurance / Trumbull (Similar CS/CS/H 1611, Compare H 1015)	Insurance; Revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; revising the requirements for public housing authority self-insurance funds; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances, etc. BI 01/29/2024 Fav/CS AEG 02/08/2024 Favorable FP 02/15/2024 Temporarily Postponed FP 02/27/2024 Fav/CS	Fav/CS Yeas 18 Nays 0
29	**CS/CS/SB 1624** Appropriations Committee on Agriculture, Environment, and General Government / Regulated Industries / Collins (Similar CS/CS/H 1645, Compare H 1493, S 1548, S 1718)	Energy Resources; Providing that resilience facilities are a permitted use in certain land use categories in local government comprehensive plans and specified districts if certain criteria are met; prohibiting amendments after a specified date to a local government's comprehensive plan, land use map, zoning districts, or land development regulations if such amendments would conflict with resiliency facility classification; requiring the Department of Management Services to develop a Florida Humane Preferred Energy Products List in consultation with the Department of Commerce and the Department of Agriculture and Consumer Services; including development districts as a type of political subdivision for purposes of preemption over utility service restrictions, etc. RI 01/29/2024 Fav/CS AEG 02/13/2024 Temporarily Postponed AEG 02/20/2024 Fav/CS FP 02/27/2024 Favorable	Favorable Yeas 13 Nays 6
30	**SB 1640** Collins (Compare H 7089, S 1502)	Payments for Health Care Services; Establishing a 3-year statute of limitations for an action to collect medical debt for services rendered by certain health care facilities; providing additional personal property exemptions from legal process for medical debts resulting from services provided in certain licensed facilities; requiring certain licensed facilities to post on their respective websites a consumer-friendly list of standard charges for a minimum number of shoppable health care services, etc. BI 02/06/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
31	**CS/SB 1656** Appropriations Committee on Criminal and Civil Justice / Martin (Identical CS/H 1545)	Child Exploitation Offenses; Revising the ranking of specified child exploitation offenses for purposes of the offense severity ranking chart of the Criminal Punishment Code, etc. CJ 01/30/2024 Favorable ACJ 02/13/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 20 Nays 0
32	**CS/CS/SB 1690** Appropriations Committee on Criminal and Civil Justice / Criminal Justice / Yarborough (Similar CS/H 1379, Compare CS/CS/CS/S 796)	Human Trafficking; Prohibiting the employment of persons younger than 21 years of age in adult entertainment establishments; providing criminal penalties; prohibiting the raising of specified arguments as a defense in a prosecution for certain violations, etc. CJ 01/30/2024 Fav/CS ACJ 02/13/2024 Fav/CS FP 02/27/2024 Temporarily Postponed	Temporarily Postponed
33	**CS/SB 1716** Banking and Insurance / Boyd (Similar CS/CS/H 1503, Compare H 1213)	Citizens Property Insurance Corporation; Providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liability, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; deleting provisions relating to emergency assessments upon determination of projected deficits; deleting provisions relating to funds available to the corporation as sources of revenue and bonds; revising eligibility for commercial lines residential risks coverage by the corporation, etc. BI 01/22/2024 Temporarily Postponed BI 01/29/2024 Fav/CS FP 02/15/2024 Temporarily Postponed FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0
34	**SB 1784** Grall (Similar CS/CS/H 7021, Compare CS/H 915, CS/H 7023, S 1626)	Mental Health and Substance Abuse; Providing an exception to background screening requirements for certain licensed physicians and nurses; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; revising the criteria for ordering a person for involuntary inpatient placement; revising eligibility requirements for children's crisis stabilization unit/juvenile addictions receiving facility services; authorizing the court or a law enforcement agency to waive or prohibit any service of process fees for petitioners determined to be indigent, etc. CF 01/30/2024 Favorable FP 02/27/2024 Fav/CS	Fav/CS Yeas 19 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
35	**CS/SB 7042** Appropriations Committee on Agriculture, Environment, and General Government / Governmental Oversight and Accountability (Similar CS/CS/H 1331)	Commodities Produced by Forced Labor; Prohibiting a company on the forced labor vendor list from taking certain procurement actions; requiring a company to provide a certain notification to the Department of Management Services within a certain timeframe; requiring the department to create and maintain a forced labor vendor list; providing a process for the department to place a company on such list, etc. AEG 02/13/2024 Fav/CS FP 02/27/2024 Fav/CS	Fav/CS Yeas 17 Nays 1
36	**CS/HB 1317** Choice & Innovation Subcommittee / Duggan (Similar CS/S 1016)	Patriotic Organizations; Authorizes school districts to allow representatives of patriotic organizations certain opportunities to speak to students, distribute certain materials, & provide certain displays relating to patriotic organizations; requires certain school districts to provide date & time for such patriotic organizations to speak with students, distribute materials, & provide certain displays; authorizes patriotic organizations to be provided certain access to school buildings & properties. FP 02/27/2024 Fav/1 Amendment	Fav/1 Amendment (Yeas 19 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 Fiscal Policy

BILL:	CS/CS/SB 24
INTRODUCER:	Fiscal Policy Committee; Governmental Oversight and Accountability Committee; and Senator Rouson and others
SUBJECT:	Dozier School for Boys and Okeechobee School Victim Compensation Program
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Henderson	Harkness	ACJ	**Favorable**
3.	Limones-Borja	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 24 creates the "Arthur G. Dozier School for Boys and Okeechobee School Victim Compensation Program," to compensate living persons who were confined to those schools.

The bill requires the Department of Legal Affairs (DLA) to accept, review, and approve or deny applications for the payment of compensation claims under the bill. Applications for compensation under this section must be submitted by December 31, 2024. An application must be made by a living person who was confined to the Dozier School for Boys or the Okeechobee School. The bill sets forth the requirements for the application. Once a person is compensated under this bill, they are ineligible for any further compensation related to the person's confinement at the Dozier School for Boys or the Okeechobee School.

The bill authorizes the Commissioner of Education to award a standard high school diploma to a person compensated under this program, if they have not completed high school graduation requirements.

The bill appropriates $20 million in nonrecurring funds from the General Revenue Fund to the Department of Legal Affairs for the Dozier School for Boys and Okeechobee School Victim Compensation Program.

This bill may have an indeterminate workload impact on the DLA associated with processing applications for compensation under this bill.

This act takes effect July 1, 2024.

II. Present Situation:

Victims of Florida Reform School Abuse

This bill defines a "victim of Florida reform school abuse" to mean a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to mental, physical, or sexual abuse perpetrated by school personnel during the period of confinement.

The Arthur G. Dozier School for Boys

From 1900 to 2011, the state operated the Florida State Reform School in Marianna. In 1967, the name was changed to the Arthur G. Dozier School for Boys (Dozier School).[1] Children were committed to the Dozier school for criminal offenses such as theft and murder, but the law was later amended to allow for children with minor offenses such as truancy to be committed. Additionally, many children who had not been charged with a crime were committed to the school as wards of the state and orphans.[2]

Beginning as early as 1901, there were reports of children being chained to walls in irons, brutal whippings, and peonage.[3] In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.[4] In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.[5] These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement (FDLE) to investigate the Dozier School and the deaths that were alleged and occurred at the school. In 2008, Governor Charlie Crist directed the FDLE to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at the Dozier School.[6] The former students of Dozier alleged that students who died as a result of abuse were buried at the school cemetery.[7]

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[1] David Built, *Arthur G. Dozier School for Boys* (Sep. 29, 2015), *available at* https://www.abandonedfl.com/arthur-g-dozier-school-for-boys/ (last visited Feb. 1, 2024).
[2] Erin H. Kimmerle, Ph.D. et al., *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, The University of South Florida, pg. 22, January 18, 2016, *available at* http://mediad.publicbroadcasting.net/p/wusf/files/201601/usf-final-dozier-summary-2016.pdf (last visited Feb. 1, 2024).
[3] *See supra* note 2, at 12.
[4] *See supra* note 2, at 27.
[5] Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009), *available at* http://thewhitehouseboys.com/fdlereport.html (last visited Feb. 1, 2024).
[6] *Id.*
[7] *Id.*

The Okeechobee School

Due to overcrowding at the Dozier School, the state opened a new reform school in Okeechobee. The first 50 boys were transferred to the Okeechobee campus from the Marianna campus along with 20 staff members.[8] Interviews with former students in the school found that the former superintendent and deputy superintendent of the Florida School for Boys in Okeechobee (Okeechobee School), would administer corporal punishment himself.[9] Several students at the Okeechobee School died in the 1960s, some of those under questionable circumstances. Two of them being a 13-year-old boy found floating face down in the school's sewage tank, and a teen shot dead during an alleged escape attempt.[10]

The Florida Crimes Compensation Act

The Florida Crimes Compensation Act[11] authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims of crime. Injured victims of crime may file for compensation for financial assistance such as treatment costs, economic loss, disability, or loss of support.[12]

Section 960.065, F.S., provides that the following persons are eligible for compensation under ch. 960, F.S.:

- A victim;
- An intervenor, defined as any person who goes to the aid of another and suffers bodily injury or death as a result of acting, not recklessly, to prevent the commission of a crime, to apprehend a person suspected of having committed a crime, or to aid a crime victim;[13]
- A surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor;
- Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.[14]

The Department of Legal Affairs cannot award compensation pursuant to ch. 960, F.S., unless it finds that a crime was committed and that it resulted in personal injury, psychiatric or psychological injury, or death to the victim or intervenor. Any award granted must be granted on an "actual need" basis and may be based on myriad other factors—including, but not limited to, the claimant's risk of serious financial hardship as a result of the injury and other claimants' rights to compensation based on the same claim.[15] An award is provided only after all benefits provided by primary insurance carriers, including, but not limited to, health and accident

[8] Richard Marion, *OYDC closure brings an end to troubled history*, South Central Florida Life (Jul. 15, 2020), *available at* https://www.southcentralfloridalife.com/stories/oydc-closure-brings-an-end-to-troubled-history,9159 (last visited Feb. 1, 2024).
[9] *Id.*
[10] WPBF News, *Investigation uncovers deaths of boys at Okeechobee Florida School for Boys* (April 10, 2015), available at https://www.wpbf.com/article/investigation-uncovers-deaths-of-boys-at-okeechobee-florida-school-for-boys/1325188# (Last visited Feb. 1, 2024).
[11] Sections 960.01-960.28, F.S.
[12] Attorney General, *Victim Compensation Brochure*, available at: https://www.myfloridalegal.com/files/pdf/page/8DE75D8DEA1F3B2285256CFD00744575/BVCVictimCompensationBrochure.pdf (last visited Feb. 1, 2024).
[13] Section 963.03(9), F.S.
[14] Section 960.065(1), F.S.
[15] Section 960.13, F.S.

insurers, workers' compensation, and automobile accident coverage.[16] Payments under ch. 960, F.S., are considered payments "of last resort," that follow all other payments.[17]

Claims will generally be denied if filed for, or on behalf of, a person who:
- Committed or aided in the commission of the crime upon which the claim for compensation was based;
- Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based, unless the victim was engaged in prostitution as a result of being a victim of human trafficking;
- Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the compensation is based;
- Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal; or
- Has been adjudicated guilty of a forcible felony offense.[18]

Claims filed by or on behalf of a person who was in custody or confined, who are adjudicated as a habitual felony offender, or found guilty of a forcible felony may be eligible upon a finding by the Crime Victim's Service Office of mitigating or special circumstances that would render a disqualification unjust.[19]

III. Effect of Proposed Changes:

Section 1 creates the Dozier School for Boys and Okeechobee School Victim Compensation Program (Program) within the Department of Legal Affairs (DLA). The purpose of the Program is to compensate living persons who were confined to the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and were subjected to mental, physical, or sexual abuse perpetrated by school personnel during the period of confinement.

Section 1 requires the DLA to accept, review, and approve or deny applications for the payment of compensation claims under this section. An application for compensation must be signed by the applicant under oath and be submitted by December 31, 2024. An application must be made by a living person who was confined at the schools between 1940 and 1975, thus preventing a personal representative or estate from receiving compensation. The application must include:
- The applicant's name, date of birth, mailing address, telephone number, and, if available, electronic mail address;
- The name of the school in which the applicant was confined and the approximate dates of the applicant's confinement;
- Reasonable proof submitted as attachments establishing that the applicant was both:
  - Confined to the Dozier School for Boys or the Okeechobee School between 1940 and 1975, which proof may include school records submitted with a notarized certificate of authenticity signed by the records custodian or certified court records;

[16] Section 960.13(2), F.S.
[17] Section 960.13(3), F.S.
[18] Section 960.065(2), F.S.
[19] Section 960.065(3), F.S.

  - A victim of mental, physical, or sexual abuse perpetrated by school personnel during the applicant's confinement, which proof may include a notarized statement signed by the applicant attesting to the abuse the applicant suffered;
- A signed statement from the applicant acknowledging that, by accepting compensation under this section, the applicant waives any right to further compensation related to the applicant's confinement at the Dozier School for Boys or the Okeechobee School or any abuse suffered during such confinement.

An application for compensation under this section must be signed by the applicant under oath. A false statement in such application, including in any attachment or exhibit submitted is subject to the penalty of perjury under s. 837.012, F.S. Section 837. 12, F.S., provides that whoever makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree.

The bill requires the DLA to maintain a page on its official website titled "The Dozier School for Boys and Okeechobee School Victim Compensation Program." The website must maintain any relevant forms for the Program available for download. Once the DLA has completed review of an application the DLA must:

- Approve a one-time payment, subject to appropriation, to those whose applications meet the criteria specified in this section;
- Deny the payment of compensation under this section to an applicant whose application does not meet the criteria specified in this section.

The bill specifies that each approved applicant shall receive an equal share of the funds appropriated for this purpose.

The DLA is required to provide written notice of such approval or denial by certified mail with return receipt requested to the mailing address provided by the applicant on the application form. An applicant whose application is rejected for providing insufficient information may submit a new application by December 31, 2024.

Section 1 prevents a person who receives compensation under this section to receive further compensation related to the person's confinement at the Dozier School for Boys or the Okeechobee School or any abuse suffered during such confinement.

The bill provides the DLA with rule making authority to administer this Program.

Section 2 authorizes the Commissioner of Education to award a standard high school diploma to a person compensated under this program, if they have not completed high school graduation requirements.

Section 3 appropriates $20 million in nonrecurring funds from the General Revenue Fund to the Department of Legal Affairs for the Dozier School for Boys and Okeechobee School Victim Compensation Program.

Section 4 provides that the act takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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 state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None. The bill directs the DLA to administer compensation to applicants if they meet the criteria if funds are appropriated for that purpose.

C. Government Sector Impact:

There will be an indeterminate negative workload impact to the DLA. The bill provides that the DLA is responsible for processing applications for persons seeking to be certified as a victim of Florida reform school abuse. As such, there may be a negative workload impact on the DLA due to the processing of applications.

The bill appropriates $20 million in nonrecurring funds from the General Revenue Fund to the Department of Legal Affairs for the Dozier School for Boys and Okeechobee School Victim Compensation Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 16.63 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 Fiscal Policy on February 27, 2024:
The committee substitute appropriates $20 million in nonrecurring funds from the General Revenue Fund to the Department of Legal Affairs for the Dozier School for Boys and Okeechobee School Victim Compensation Program.

CS by Governmental Oversight and Accountability on February 6, 2024:
The committee substitute retains the programmatic pieces of the bill, but makes the following changes:

- The Department of Legal Affairs will accept, review, and approve or deny applications instead of the Department of State.
- An application for compensation must be made by a living person who was confined at the Dozier School for Boys and the Okeechobee School.
- Prevents the estate, personal representative, next of kin, or lineal descendants of a decedent from submitting an application for compensation.
- Extends the submission deadline for the applications for compensation to December 31, 2024.
- Authorizes the Commissioner of Education to award a standard high school diploma to a person compensated under this program, if they have not completed high school graduation requirements.

B. Amendments:

None.

825836

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Rouson) recommended the following:

Senate Amendment (with title amendment)

Between lines 111 and 112

insert:

Section 3. For the 2024-2025 fiscal year, the sum of $20 million in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Legal Affairs for the Dozier School for Boys and Okeechobee School Victim Compensation Program.

825836

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 26
and insert:
circumstances; providing an appropriation; providing an effective date.

By the Committee on Governmental Oversight and Accountability; and Senators Rouson, Davis, and Osgood

585-03005-24 202424c1

A bill to be entitled

An act relating to the Dozier School for Boys and Okeechobee School Victim Compensation Program; creating s. 16.63, F.S.; establishing the Dozier School for Boys and Okeechobee School Victim Compensation Program within the Department of Legal Affairs; specifying the purpose of the program; requiring the department to accept and process applications for the payment of compensation claims under the program; requiring the department to provide specified notice of the program; specifying application procedures and requirements; requiring the department to issue application approvals or denials under specified conditions; requiring the department, subject to the appropriation of funds for that purpose, to pay a specified compensation amount to approved applicants; requiring notice of application approval or denial; authorizing an applicant whose application is rejected to submit a new application; providing that a person compensated under the program is ineligible for further compensation related to his confinement; requiring the department to adopt by rule specified procedures and forms; authorizing the Commissioner of Education to award a standard high school diploma to specified persons under certain circumstances; providing an effective date.

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

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

585-03005-24 202424c1

Section 1. Section 16.63, Florida Statutes, is created to read:

16.63 Dozier School for Boys and Okeechobee School Victim Compensation Program.—

(1) The Dozier School for Boys and Okeechobee School Victim Compensation Program is established within the Department of Legal Affairs. The purpose of the program is to compensate living persons who were confined to the Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who were subjected to mental, physical, or sexual abuse perpetrated by school personnel while they were so confined.

(2) The Department of Legal Affairs shall accept, review, and approve or deny applications for the payment of compensation claims under this section. Notice of the availability of such compensation must be given and any relevant forms made available for download on a page of the department's official website accessible through a direct link on the website's homepage, which link and page must be titled "The Dozier School for Boys and Okeechobee School Victim Compensation Program."

(3) An application for compensation under this section must be made by a living person who was confined to the Dozier School for Boys or the Okeechobee School between 1940 and 1975; the personal representative or estate of a decedent may not file an application for or receive compensation under this section. Such application must be made on a form approved by the department and include:

(a) The applicant's name, date of birth, mailing address, telephone number, and, if available, electronic mail address.

(b) The name of the school in which the applicant was

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confined and the approximate dates of the applicant's confinement.

(c) Reasonable proof submitted as attachments establishing that the applicant was both:

1. Confined to the Dozier School for Boys or the Okeechobee School between 1940 and 1975, which proof may include school records submitted with a notarized certificate of authenticity signed by the records custodian or certified court records.

2. A victim of mental, physical, or sexual abuse perpetrated by school personnel during the applicant's confinement, which proof may include a notarized statement signed by the applicant attesting to the abuse the applicant suffered.

(d) A signed statement from the applicant acknowledging that, by accepting compensation under this section, the applicant waives any right to further compensation related to the applicant's confinement at the Dozier School for Boys or the Okeechobee School or any abuse suffered during such confinement.

An application for compensation under this section must be signed by the applicant under oath. A false statement in such application, including in any attachment or exhibit submitted therewith, is subject to the penalty of perjury under s. 837.012.

(4) Applications for compensation under this section must be submitted no later than December 31, 2024.

(5) Upon completed review of an application submitted under this section, the department shall either:

(a) Subject to appropriation, approve a one-time payment to

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

an applicant whose application meets the criteria specified in this section. Each approved applicant shall receive an equal share of the funds appropriated for this purpose.

(b) Deny the payment of compensation under this section to an applicant whose application does not meet the criteria specified in this section.

Written notice of such approval or denial must be sent by certified mail, return receipt requested, to the mailing address provided by the applicant on the application form. An applicant whose application is rejected for providing insufficient information may submit a new application as provided in subsection (4).

(6) A person compensated under this section is ineligible for any further compensation related to the person's confinement at the Dozier School for Boys or the Okeechobee School or any abuse suffered during such confinement.

(7) The department shall adopt by rule procedures and forms necessary to administer this section.

Section 2. Pursuant to rules adopted by the State Board of Education, the Commissioner of Education may award a standard high school diploma to a person compensated pursuant to s. 16.63, Florida Statutes, who has not completed high school graduation requirements.

Section 3. This act shall take effect July 1, 2024.

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2-27-24
Meeting Date

Fiscal Policy
Committee

SB24
Bill Number or Topic

Amendment Barcode (if applicable)

Name Charles Fudge

Phone 727-385-6109

Address 116 Lemington Ct.
Street

Email none

Homosassa FL 34446
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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2/27/24
Meeting Date

SB 24
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Cecil Gardner

Phone 850-997-4992

Address 2286 Lloyd Creek Road
Street

Email N/A

Monticello, FL 32344
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information **OR** Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2.27.2024
Meeting Date

Fiscal
Committee

SB 24
Bill Number or Topic

Amendment Barcode (if applicable)

Name Troy Rafferty

Phone 850-698-2572

Address 316 S. Baylen Street
Street

Email trafferty@levinlaw.com

Pensacola, FL 32502
City State Zip

Speaking: [X] For [ ] Against [ ] Information **OR** Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

2/27/24
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SB 0024
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Katie Bohnett ("Bow - Net")

Phone 850.339.9599

Address 173 Seminole DR
Street

Email kbohnett@safeandjust.org

TLH, FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Alliance for Safety & Justice

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

FISCAL
Committee

24
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brasor Democratic Women's Club

Phone 561 815 2861

Address 12031 Corozo
Street

Email jbrasor@gmail.com

RB6 FL 33418
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

SB-24
Bill Number or Topic

Committee Gene Luker

Amendment Barcode (if applicable)

Name Gene Luker

Phone 813.205.7663

Address 5606 GATEWAY DR.
Street

Email g.lukerdvz@verizon.net

TAMPA FL. 33615
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-27-24
Meeting Date

Fiscal Policy
Committee

SB 24
Bill Number or Topic

Amendment Barcode (if applicable)

Name Diane Fudge

Phone 727-744-5918

Address 116 Lemington Ct.
Street

Email dianejfudge@gmail.com

Homosassa FL 34446
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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2/27/24
Meeting Date

SB 24
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Charles Max Kennedy

Phone (904) 258-2027

Address 250 Cherry Ridge Dr. #414
Street

Email maxkennedy@Gmail.com

JAX FL 32222
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ■ In Support ☐ Against

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2-27-24
Meeting Date

SB24
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Virginia Kennedy Phone 904-258-2027

Address 250 Cherry Ridge Dr. Unit 414 Email VKennedyartist@gmail.com
Street

Jax FL 32222
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

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2/27/2024
Meeting Date

Fiscal
Committee

5324
Bill Number or Topic

Amendment Barcode (if applicable)

Name ELIZABETH COOPER Phone 407-365-5558

Address 1621 S REEDY LK BLVD Email
Street

FROSTPROOF FL 33843
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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2/27/2024
Meeting Date

Fiscal
Committee

SB 24
Bill Number or Topic

Amendment Barcode (if applicable)

Name (Harley) James DeNyke Phone 863-773-7526

Address 1621 S Reedy Lk Blvd Email JDENYKE@YAHOO
Street

Frostproof, FL 33843
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

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2/27/2024
Meeting Date

Fiscal
Committee

SB 24
Bill Number or Topic

Amendment Barcode (if applicable)

Name Paul A Elgin

Phone 407-341-5900

Address 7032 Cocos dr
Street

Email earthbeatlive@bellsouth.net

Orlando FL 32807
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

2/27/2024
Meeting Date

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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SB #24
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name John M Bell

Phone (352) 460-5226

Address PO Box 492221
Street

Email

Leesburg, Florida
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24
Meeting Date

24
Bill Number or Topic

Fiscal
Committee

DEMOCRATIC WOMENS CLUB
Amendment Barcode (if applicable)

Name Dr Joan Weitkenia Phone 561 307 3448

Address 2600 N Flagler Dr #207 Email
Street

West Palm Beach FL 33407
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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7/7/2024
Meeting Date

FISCAL
Committee

24
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shirley Y. Herman

Phone 561-596-7780

Address 7600 N. Flagler apt 207
Street

West Palm Beach, FL 33407
City State Zip

Email Shirleyyherman@aol.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 26
INTRODUCER:	Appropriations Committee on Criminal and Civil Justice; Governmental Oversight and Accountability Committee; and Senator Rouson and others
SUBJECT:	Public Records/Dozier School for Boys and Okeechobee School Victim Compensation Program
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Fav/CS**
2.	Henderson	Harkness	ACJ	**Fav/CS**
3.	Limones-Borja	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 26 makes confidential and exempt from public records copying and inspection requirements the personal identifying information in an application of individuals applying to seek compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program (Program). The bill provides that, in accordance with the law or upon court order, the information made confidential and exempt may be released to the Department of Education for the purpose of facilitating the award of high school diplomas to individuals compensated through the Program.

The bill provides a statement of public necessity as required by the State Constitution.

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

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2029, unless reviewed and saved from the repeal through reenactment by the Legislature.

The bill has an insignificant, negative fiscal impact on state or local government revenues and expenditures. See Section V., Fiscal Impact Statement.

The bill takes effect on the same day as SB 24, or any similar legislation, takes effect. As filed, SB 24 takes effect July 1, 2024.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy 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.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll 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 connections with the transaction of official business by any agency.

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[9] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10]

General exemptions from the public records requirements are contained in the Public Records Act.[11] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[12]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[13] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[14] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id*.
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

or open meetings exemptions,[16] with specified exceptions.[17] The Act requires the repeal of such exemption 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 or repeal the sunset date.[18] In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary. An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[19]
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[20] or
- It protects trade or business secrets.[21]

The Act also requires specified questions to be considered during the review process.[22] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[23] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[24]

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[16] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.
[17] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[18] Section 119.15(3), F.S.
[19] Section 119.15(6)(b)1., F.S.
[20] Section 119.15(6)(b)2., F.S.
[21] Section 119.15(6)(b)3., F.S.
[22] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[23] *See generally* s. 119.15, F.S.
[24] Section 119.15(7), F.S.

Victims of Florida Reform School Abuse

SB 24 defines a "victim of Florida reform school abuse" to mean a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to mental, physical, or sexual abuse perpetrated by school personnel during the period of confinement.

The Arthur G. Dozier School for Boys

From 1900 to 2011, the state operated the Florida State Reform School in Marianna. In 1967, the name was changed to the Arthur G. Dozier School for Boys (Dozier School).[25] Children were committed to the Dozier school for criminal offenses such as theft and murder, but the law was later amended to allow for children with minor offenses such as truancy to be committed. Additionally, many children who had not been charged with a crime were committed to the school as wards of the state and orphans.[26]

Beginning as early as 1901, there were reports of children being chained to walls in irons, brutal whippings, and peonage.[27] In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.[28] In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.[29] These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement (FDLE) to investigate the Dozier School and the deaths that were alleged and occurred at the school. In 2008, Governor Charlie Crist directed the FDLE to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at the Dozier School.[30] The former students of Dozier alleged that students who died as a result of abuse were buried at the school cemetery.[31]

The Okeechobee School

Due to overcrowding at the Dozier School, the state opened a new reform school in Okeechobee. The first 50 boys were transferred to the Okeechobee campus from the Marianna campus along with 20 staff members.[32] Interviews with former students in the school found that the former superintendent and deputy superintendent of the Florida School for Boys in Okeechobee (Okeechobee School), would administer corporal punishment himself.[33] Several students at the

[25] David Built, *Arthur G. Dozier School for Boys* (Sep. 29, 2015), *available at* https://www.abandonedfl.com/arthur-g-dozier-school-for-boys/ (last visited Feb. 2, 2024).
[26] Erin H. Kimmerle, Ph.D. et al., *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, The University of South Florida, pg. 22 (January 18, 2016), *available at* http://mediad.publicbroadcasting.net/p/wusf/files/201601/usf-final-dozier-summary-2016.pdf (last visited Feb. 1, 2024).
[27] *See supra* note 26, at 12.
[28] *See supra* note 26, at 27.
[29] Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009), available at http://thewhitehouseboys.com/fdlereport.html (last visited Feb. 2, 2024).
[30] *Id.*
[31] *Id.*
[32] Richard Marion, *OYDC closure brings an end to troubled history*, South Central Florida Life (Jul. 15, 2020), *available at* https://www.southcentralfloridalife.com/stories/oydc-closure-brings-an-end-to-troubled-history,9159 (last visited Feb. 2, 2024).
[33] *Id.*

Okeechobee School died in the 1960s, some of those under questionable circumstances. Two of them being a 13-year-old boy found floating face down in the school's sewage tank, and a teen shot dead during an alleged escape attempt.[34]

III. Effect of Proposed Changes:

Section 1 creates s. 16.64, F.S., to exempt from public records inspection and copying requirements any personal identifying information in an application submitted to the Department of Legal Affairs by, or on behalf of, a person seeking compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program.

Specifically, the bill makes confidential and exempt the following information in an application:

- Any name;
- Date of birth;
- Driver license number;
- Social security number;
- Home or mailing address;
- Telephone number; and
- Electronic mail address.

The bill authorizes the release of such confidential and exempt information to the Department of Education for the purpose of facilitating the award of high school diplomas to individuals compensated through the Program.

Section 2 provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that the release of personal identifying information from the application could subject the victims to further trauma. The public necessity statement also provides that victims would be more likely to come forward if their personal identifying information is protected from public disclosure.

Section 3 provides that the bill takes effect the same day SB 24, or any similar legislation, takes effect, if it is adopted in the same legislative session or an extension thereof. As filed, SB 24 takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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 state tax shared with counties and municipalities.

[34] WPBF News, *Investigation uncovers deaths of boys at Okeechobee Florida School for Boys* (April 10, 2015), *available at* https://www.wpbf.com/article/investigation-uncovers-deaths-of-boys-at-okeechobee-florida-school-for-boys/1325188# (last visited Feb. 2, 2024).

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records pertaining to personal identifying information in an application; therefore, the bill requires a two-thirds vote of each chamber for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to the victims of reform school abuse. This bill exempts only personal identifying information in an application to the DLA. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent imposed, associated with making the redactions in response to a public record request.

C. Government Sector Impact:

The bill may have a minimal workload impact on the DLA related to the redaction of personal identifying information in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 16.64 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 20, 2024:
The committee substitute creates an exception for the release of confidential and exempt information to the Department of Education for the purpose of facilitating the award of high school diplomas referenced in SB 24.

CS by Governmental Oversight and Accountability on February 6, 2024:
The committee substitute makes the personal identifying information in an application confidential and exempt. It also extends the sunset date of the exemption to October 2, 2029.

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 Appropriations Committee on Criminal and Civil Justice; the Committee on Governmental Oversight and Accountability; and Senators Rouson, Davis, and Pizzo

604-03507-24 202426c2

A bill to be entitled

An act relating to public records; creating s. 16.64, F.S.; providing an exemption from public records requirements for the personal identifying information in an application submitted to the Department of Legal Affairs by, or on behalf of, a person seeking compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program; providing exceptions; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 16.64, Florida Statutes, is created to read:

16.64 Applications for compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program; public records exemption.—

(1) Any name, date of birth, driver license number, social security number, home address, mailing address, telephone number, or electronic mail address in an application submitted to the Department of Legal Affairs by a person seeking compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and may not be disclosed except as provided in subsection (2).

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604-03507-24 202426c2

(2) The information made confidential and exempt under subsection (1) may be released to the Department of Education for the purpose of facilitating the award of standard high school diplomas to persons compensated through the Dozier School for Boys and Okeechobee School Victim Compensation Program in accordance with law, or upon court order.

(3) This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any name, date of birth, driver license number, social security number, home address, mailing address, telephone number, or electronic mail address in an application submitted to the Department of Legal Affairs by a person seeking compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, except as provided in s. 16.64(2), Florida Statutes, or upon court order. The Legislature finds that the release of such personal identifying information, except as provided in s. 16.64(2), Florida Statutes, or upon court order, could subject the persons applying for compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program to further trauma should their status as a victim of the Dozier School for Boys or the Okeechobee School, or the nature of the abuse each victim suffered there, be made public, and to the possibility of harassment. The Legislature further finds that a victim of the Dozier School for Boys or the

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Okeechobee School may be more likely to come forward and apply for compensation through the Dozier School for Boys and Okeechobee School Victim Compensation Program if the personal identifying information in the application is protected from public disclosure. The Legislature finds that the harm that may result from the release of such information outweighs the public benefit that may be derived from the disclosure of such information.

Section 3. This act shall take effect on the same date that SB 24 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

RSCA
Committee

~~SB~~ 26
Bill Number or Topic

Amendment Barcode (if applicable)

Name Democratic Womens Club Dr Joan Untkevicz

Phone 561 307 3418

Address 2600 N Flagler Dr 207
Street

Email dwcjoan@gmail.com

West Palm Beach FL 33407
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/7/2024
Meeting Date

FISCAL
Committee

26
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shirley Y. Herman

Phone 561-596-7780

Address 2600 N. Flagler Apt 207
Street

Email shirleyyherman@aol.com

West Palm Beach, FL 33407
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

2/27/24
Meeting Date

FISCAL
Committee

The Florida Senate

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26
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brasor Dan Women's Club Phone 561 815 7581

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Street

PBG FL 33418
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2-27-2024
Meeting Date

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~~SB~~ SB 24 + 26
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Ralph Freeman

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Valdosta GA 31605
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 106
INTRODUCER:	Appropriations Committee on Agriculture, Environment and General Government and Senator Jones
SUBJECT:	Acceptance of Cash Payments by Businesses
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	**Favorable**
2.	Blizzard	Betta	AEG	**Fav/CS**
3.	Baird	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 106 requires any business that operates at a permanent or temporary physical premises, or from a vehicle or other mobile space, to accept an offer of payment in cash by a customer physically present. Cash is defined as the coin and currency of the United States. The bill also prohibits a business from charging a fee or placing a condition on its acceptance of cash, and gives rulemaking and enforcement authority to the Department of Agriculture and Consumer Services. Violations of the cash acceptance provisions will be subject to civil fines.

These provisions do not apply to:

- Sales that are not conducted in person;
- A parking facility owned by a municipality;
- A parking facility and commercial ground transportation operations owned or operated by an airport or seaport;
- A parking facility that accepts electronic funds transfers;
- A business providing services by specified professions;
- Sales in which the business suspects the use of counterfeit cash;
- The use of cash denominations higher than $20;
- Single transactions above $5,000;
- Secondary metals recyclers; and
- Continuous service or membership contract agreements.

The bill has an indeterminate fiscal impact on state revenues and expenditures. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2024.

II. Present Situation:

There is no federal law that requires a private business to accept cash payments. States are within their rights to create laws regulating how businesses accept or reject payments.[1]

Currently, Florida has no law dictating whether a business must accept a cash payment or not. Some businesses in the state do not offer consumers the option of paying cash for transactions involving the purchase of goods and services.

With 85 percent of Americans having a smartphone, more purchases get made digitally than ever before.[2] Exacerbating the situation, the Covid-19 pandemic forced many businesses around the country to alter their business models to facilitate contactless purchases, where customers could order goods online and then have them picked up or delivered. This has all contributed to a decline in the use of cash.

Payment Instruments

Technology has allowed for consumers to make purchases with a variety of different payment instruments. Mobile wallets, which include credit or debit cards that are used through a smartphone, are projected to be used by 60 percent of the world's population by 2025.[3]

Recently, the Federal Reserve conducted a study that found credit card usage is the highest it has ever been.[4] Below is a table representing the percentage share of the various payment instruments used in 2022. [5]

[1] Board of Governors, Federal Reserve System, *Is It Legal for a Business in the United States to Refuse Cash as a Form of Payment?*, Fed. Reserve.gov, *available at* https://www.federalreserve.gov/faqs/currency_12772.htm, (last visited December 4, 2023).
[2] Pew Research Center, *2022: Internet, smartphone and social media use*, (December 6, 2022), *available at* https://www.pewresearch.org/global/2022/12/06/internet-smartphone-and-social-media-use-in-advanced-economies-2022/ (last visited December 4, 2023).

[3] Juniper Research, Boku, *Study: More than half of the world's population will use mobile wallets by 2025*, (July 8, 2021), *available at* https://www.globenewswire.com/en/news-release/2021/07/08/2259605/0/en/Study-More-than-half-of-the-world-s-population-will-use-mobile-wallets-by-2025.html, (last visited December 4, 2023).
[4] Cubides, Emily, and Shaun O'Brien. *2023 Findings from the Diary of Consumer Payment Choice*, (May 5, 2023), *available at* https://www.frbsf.org/cash/wp-content/uploads/sites/7/2023-Findings-from-the-Diary-of-Consumer-Payment-Choice.pdf (last visited December 4, 2023).
[5] *Id*. at 6.

Share of Payment Instrument Use for all Payments in 2022					
Cash	**Credit Card**	**Debit Card**	**ACH**	**Mobile Payment App**	**Other**
18%	31%	29%	13%	<1%	9%

However, the Bureau of Consumer Financial Protection estimated that 20 to 30 percent of adults in the United States do not have a credit card.[6] Adults without credit cards mostly rely on cash and debit cards. Consumers that do not have a bank account are more likely to use cash than consumers that do have a bank account.[7]

Other States

Within the last five years, there has been a trend of states passing legislation that requires businesses to accept cash payments. States that have passed similar acceptance of cash payments legislation include: Arizona, Colorado, Connecticut, Delaware, Idaho, Maine, Massachusetts, Michigan, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island and Tennessee.

The language in these state's laws vary, but they share the basic principal that most retail stores are required to accept cash as a form of payment. The states vary in penalties for violating. For instance in Massachusetts, violators of the statute may be fined or even imprisoned up to six months.[8]

The Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the DACS regulates specific business activities, including commercial weight loss practices, telephone solicitations, dance studios, pawnshops, health studios, sellers of travel, and telemarketers. The division is also responsible for protecting consumers from unfair and unsafe business practices involving products, including petroleum products, brake fluid, antifreeze, lubricating oil, and weighing and measuring devices.

The Office of Agricultural Law Enforcement (OALE) enforces laws governing businesses regulated by the DACS. The OALE protects consumers from unfair and deceptive trade practices, protects Florida's agriculture industry from theft and other crimes, and safeguards the

[6] This estimate is according to coverage of credit records present in the CCP sample, though this does not include authorized users, who are individuals designated by the primary account holder to use the same credit account. A recent report from the Federal Reserve finds 83 percent of consumers report having at least one credit card. *See* Bd. of Governors of Fed. Rsv. Sys., *Report on the Economic Well-Being of U.S. Households in 2020*, at 42 (May 2021), *available at* https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-banking-and-credit.htm, (last visited December 4, 2023).
[7] Consumers that do not have bank accounts made 66 percent of all payments with cash in 2022. *See*, note 5 *supra*.
[8] Mass. Gen. Laws Ann. Ch. 255D, § 30

wholesomeness of food and other consumer products.[9] The OALE currently partners with federal, state and local law enforcement agencies.[10]

III. Effect of Proposed Changes:

This bill requires that a business that operates at a fixed permanent physical premises, from a vehicle or other mobile space, or from a temporary physical premise, must accept an offer of payment in cash, defined as legal tender of the United States in the form of coins or currency, under the following conditions:

- The purchase is for a tangible good or service;
- The business would accept one or more other forms of payment; and
- The customer seeking to engage in the transaction is physically present at the place of business.

The bill authorizes a business to have an onsite cash-to-card kiosk available for customer use, into which the customer could deposit cash in exchange for a debit card loaded with the amount deposited that the customer could use for a transaction.

The bill prohibits a business from charging a fee or placing any other condition on its acceptance of a cash payment.

The requirement that cash must be accepted as a form of payment does not apply in the following circumstances:

- The sale is not conducted in person;
- The business is a parking facility that is owned by a municipality, regardless of who operates the facility, or if the parking facility accepts electronic funds transfers;
- The business is a parking facility and commercial ground transportation operations owned or operated by an airport or seaport;
- The business provides services by accountants, architects, attorneys, engineers, financial advisors, insurance agents, interior designers, software developers, or management and other consultants, not including services provided by licensed medical or allied health care practitioners;
- The business suspects the use of counterfeit cash;
- Bills greater than $20;
- Single transactions above $5,000;
- The business is a secondary metals recycler as defined in s. 538.18, F.S.; and
- The business provides continuous service or membership contract agreements.

A business that violates the requirement is subject to a civil penalty of up to $2,500 for the first offense, up to $5,000 for a second offense, and up to $10,000 for a third or subsequent offense. These violations are to be levied by the DACS based upon rules the DACS must implement.

[9] Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, *available at* https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement, (last visited December 4, 2023).
[10] *Id*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector impact is indeterminate. Businesses that have transitioned to cashless operations may incur costs associated with the handling and security of cash.

C. Government Sector Impact:

The DACS estimates additional resources may be needed to implement investigative and enforcement mechanisms required by the bill. It is unknown how many businesses will be impacted by the changes in the bill and how many complaints will be filed with the Division of Consumer Services and Office of Agricultural Law Enforcement. If the workload is greater than anticipated, additional resources may be requested in the future.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not clearly define what a “tangible good” or “service” is. Businesses and the DACS may need further clarity to determine if a business is required to accept the payment of cash for certain purchases.

VIII. Statutes Affected:

This bill creates section 559.96 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 Appropriations Committee on Agriculture, Environment and General Government on January 17, 2024:
The committee substitute:

- Authorizes the use of cash-to-card kiosks to satisfy the requirement for businesses to accept cash.
- Clarifies that a parking facility and commercial ground transportation operations owned or operated by an airport or a seaport are exempt from the cash payment requirement.
- Exempts secondary metal recyclers and businesses that provide continuous service or membership contract agreements from the requirement to accept cash.

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 Appropriations Committee on Agriculture, Environment, and General Government; and Senator Jones

601-02199-24 2024106c1

A bill to be entitled

An act relating to acceptance of cash payments by businesses; creating s. 559.96, F.S.; defining terms; requiring certain businesses to accept cash payments for certain transactions; authorizing a business to satisfy such requirements by placing a cash-to-card kiosk at the business location for customers to make payments; prohibiting such businesses from charging a fee or placing conditions on acceptance of such cash payments; providing applicability; providing penalties for violations of the act; requiring the Department of Agriculture and Consumer Services to adopt certain rules; providing an effective date.

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

Section 1. Section 559.96, Florida Statutes, is created to read:

559.96 Acceptance of cash payments by businesses.—

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

(a) "Business" means any business operating at a fixed, permanent physical premises; from a vehicle or other mobile space; or from a temporary physical premises.

(b) "Cash" means legal tender of the United States in the form of coins or currency.

(c) "Department" means the Department of Agriculture and Consumer Services.

(2)(a) A business must accept an offer of payment in cash for any transaction involving the purchase of any tangible good

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601-02199-24 2024106c1

or any service if, in connection with such transaction, the business would accept one or more other forms of payment and the customer seeking to engage in such transaction is physically present at the place of business.

(b) A business may satisfy the requirement in paragraph (a) by having available on site a cash-to-card kiosk into which a customer deposits cash and is given a debit card loaded with the amount he or she deposited. The customer may use the debit card to complete a transaction at the place of business.

(c) A business may not charge a fee or place any other condition on its acceptance of cash as required by paragraph (a).

(3) This section does not apply to:

(a) Sales that are not conducted in person, including telephone, mail, and Internet-based or other electronic transactions.

(b) A parking facility owned by a municipality, regardless of who operates the facility.

(c) A parking facility and commercial ground transportation operations owned or operated by an airport or a seaport.

(d) A parking facility that accepts electronic funds transfers.

(e) A business providing services by accountants, architects, attorneys, engineers, financial advisers, insurance agents, interior designers, software developers, or management and other consultants, not including services provided by licensed medical or allied health care practitioners.

(f) Sales in which the business suspects the use of counterfeit cash.

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(g) The use of cash denominations larger than $20 by a customer.

(h) Single transactions above $5,000.

(i) Secondary metals recyclers, as defined in s. 538.18.

(j) Continuous service or membership contract agreements.

(4) A business that violates this section is subject to a civil penalty of up to $2,500 for a first offense, up to $5,000 for a second offense, and up to $10,000 for a third or subsequent offense, to be assessed by the department.

(5) The department shall adopt rules necessary to implement this section.

Section 2. This act shall take effect July 1, 2024.

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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 Fiscal Policy

BILL:	SB 436
INTRODUCER:	Senator Grall
SUBJECT:	Pregnancy and Parenting Resources Website
DATE:	February 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	**Favorable**
2.	Gerbrandt	McKnight	AHS	**Favorable**
3.	Looke	Yeatman	FP	**Favorable**

I. Summary:

SB 436 creates s. 383.0131, F.S., to require the Department of Health (DOH), in consultation with the Department of Children and Families (DCF) and the Agency for Health Care Administration (AHCA), to maintain a website, distinct from its own website, to provide information and links for public and private resources for expectant families and new parents. The DOH must contract for the creation of the website and it must be operational by January 1, 2025. The bill specifies categories of resources that must be available on the website but does not limit the website to those categories. Additionally, the bill requires the DCF and the AHCA to include clear and conspicuous links to the website on their websites.

The bill has a significant, negative fiscal impact on state expenditures. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

DOH Pregnancy Support and New Parent Support Web Resources

Currently, the Department of Health (DOH) provides separate websites for pregnancy and new parent resources. The DOH's pregnancy website[1] includes numerous links to resources for pregnant women. These include information on what to do after pregnancy, available community resources, still-birth prevention, emergency preparedness, birth defects, the effect of various conditions and illness on pregnancy, tobacco use, and the Healthy Start program, among others.

[1] The Florida Department of Health, Pregnancy, available at https://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/index.html, (last visited Jan. 19, 2024).

The parenting support webpage[2] has similar links to multiple resources for new parents including information on newborn screening, immunizations, and other programs such as Early Steps, Healthy Start, Florida Prepaid, and Bright Expectations.

Online Portals

State agencies in Florida operate statutorily mandated online portals on various topics. For example:

- The Department of Education is required in s. 1001.10, F.S., to develop an online portal for parents to choose the best education options for their students. The statute requires that the portal must:
  - Recommend educational options based on questions about the student, including the needs and interests of the student.
  - Advise parents on the recommended educational options for their student.
  - Enable schools to develop a school profile and connect directly with families who express interest in the school.
  - Allow parents to complete the school enrollment process.
- The Department of Children and Families is required by s. 409.1464, F.S., to operate a website as part of the Responsible Fatherhood Initiative that will allow a father to obtain information about effective parenting, identify areas in which support would enable him to enhance his ability to be an effective father, and be connected to such support, including, but not limited to, support provided by organizations receiving specified grants.
- The Agency for Health Care Administration is required by s. 408.05, F.S., to contract with a vendor to provide a consumer-friendly, Internet-based platform that allows a consumer to research the cost of health care services and procedures and allows for price comparison. The AHCA is required to actively oversee the platform and the platform must allow a consumer to search by condition or service bundles that are comprehensible to a layperson and may not require registration, a security password, or user identification. The vendor is also required to establish and maintain a Florida-specific data set of health care claims information available to the public and any interested party.

III. Effect of Proposed Changes:

The bill creates s. 383.0131, F.S., to establish a pregnancy and parenting resources website. The bill requires the Department of Health (DOH) to contract for the creation of the website which is required to be a stand-alone website that must be operational by January 1, 2025. The DOH, in consultation with the Department of Children and Families and the Agency for Health Care Administration, is required to maintain the website, and each of these agencies must post a clear and conspicuous link to the website on their respective webpages. The website must have information and links to public and private resources for expectant families which include, but are not limited to:

- Educational materials on pregnancy and parenting;
- Maternal health services;
- Prenatal and postnatal services;

[2] The Florida Department of Health, New Parents, available at https://www.floridahealth.gov/programs-and-services/vital-statistics/index.html. (last visited Jan. 19, 2024).

- Educational and mentorship programs for fathers;
- Social services;
- Financial assistance; and
- Adoption services.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a significant, negative fiscal impact on the Department of Health (DOH). The DOH estimates a cost of $466,200 to implement the bill, of which $97,600 is recurring and $368,600 is nonrecurring.[3]

[3] Department of Health, *2024 Agency Legislative Bill Analysis: SB 436,* pp. 3-4, Nov. 17, 2023 (on file with the Senate Committee on Health Policy).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 383.0131 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 Senator Grall

29-00521-24 2024436__

A bill to be entitled

An act relating to a pregnancy and parenting resources website; creating s. 383.0131, F.S.; requiring the Department of Health, in consultation with the Department of Children and Families and the Agency for Health Care Administration, to maintain a website that provides information and links to certain pregnancy and parenting resources; requiring each department and the agency to provide a clear and conspicuous link to the website on their respective websites; requiring the Department of Health to contract with a third party to develop the website by a specified date; providing an effective date.

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

Section 1. Section 383.0131, Florida Statutes, is created to read:

383.0131 Pregnancy and parenting resources website.—

(1) The Department of Health, in consultation with the Department of Children and Families and the Agency for Health Care Administration, shall maintain a website, distinct from their own websites, which provides information and links to public and private resources for expectant families and new parents, which resources include, but are not limited to:

(a) Educational materials on pregnancy and parenting.

(b) Maternal health services.

(c) Prenatal and postnatal services.

(d) Educational and mentorship programs for fathers.

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Florida Senate - 2024 SB 436

29-00521-24 2024436__

(e) Social services.

(f) Financial assistance.

(g) Adoption services.

(2) The Department of Health, the Department of Children and Families, and the Agency for Health Care Administration shall include a clear and conspicuous link to the website on their respective websites.

(3) The Department of Health shall contract with a third party for the development of the website, which must be operational by January 1, 2025.

Section 2. This act shall take effect July 1, 2024.

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The Florida Senate

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2/27/24
Meeting Date

436
Bill Number or Topic

Fiscal
Committee

Democratic Womens Club
Amendment Barcode (if applicable)

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West Palm Beach FL 33407
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 436
Bill Number or Topic

Amendment Barcode (if applicable)

Name Letitia Harman

Phone

Address
Street

Email

City State 32256 Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Rising

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 436
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aaron DiPietro

Phone 904-608-4471

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Orlando. FL 32853
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Family Policy Council

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

TUESDAY 02-27-2024
Meeting Date

SB 0436
Bill Number (if applicable)

Topic PREGNANCY AND PARENTING RESOURCES WEBSIGHT
Amendment Barcode (if applicable)

Name TAMMY FECCI

Job Title ASSOCIATE OF LIFE AND DIGNITY

Address FLORIDA CONFERENCE OF
Street
CATHOLIC BISHOPS
City *State* *Zip*

Phone 239-218-8661

Email tfecci@flacathconf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CONFERENCE OF CATHOLIC BISHOPS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

2/27/24

2/27/24

Meeting Date

Fiscal Policy

Committee

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

SB 436

Bill Number or Topic

Amendment Barcode (if applicable)

Name Yenisbel Vilorio

Phone

Address

Street

Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Six Action

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

02/27/2024
Meeting Date

Fiscal Policy
Committee

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

436
Bill Number or Topic

Amendment Barcode (if applicable)

Name Michelle Shindano

Phone

Address
Street

Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Alliance of Planned Parenthood Affiliates

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/2024
Meeting Date

Fiscal Policy
Committee

436
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Labriola

Phone 954-515-2084

Address PO Box 650216
Street

Email JohnLabriola@cfcflorida.net

Miami FL 33265
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Christian Family Coalition Florida

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/7/2024
Meeting Date

Fiscal
Committee

SB 436
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shirley Y. Herman

Phone 561-596-7780

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Street

West Palm Beach, FL 33407
City State Zip

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Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/CS/SB 536
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Health and Human Services; Children, Families, and Elder Affairs Committee; and Senator Garcia
SUBJECT:	Community-based Child Welfare Agencies
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodruff	Tuszynski	CF	**Fav/CS**
2.	Sneed	McKnight	AHS	**Fav/CS**
3.	Tuszynski	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 536 amends laws related to the Department of Children and Families (DCF) contracts with community-based care lead agencies (CBCs) to increase transparency and accountability of the services provided by the CBCs.

The bill reforms contractual rights and obligations between DCF and the CBCs, establishes the regulatory framework for a CBC's subcontracts and transactions with related parties, revises the CBC subcontract procurement process, and creates contractual remedies to address failures to follow procurement law, noncompliance with contractual requirements, and inadequate performance in the provision of child protection and child welfare services.

The bill also establishes a new funding methodology for the allocation of core service funds.

The bill has no fiscal impact for Fiscal Year 2024-25, but may redistribute funding among CBCs beginning in Fiscal Year 2025-26 and annually thereafter. The bill has no fiscal impact on local government. *See* Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) and community-based care lead agencies (CBCs) work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for children.

The child welfare system includes the following key elements:
- A report to the central abuse hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent, if the child is determined to need such protection.
- Case planning to address the problems resulting in the child's dependency.
- Reunification with the child's parents or another option to establish permanency, such as adoption.

The DCF is responsible for program oversight and the overall performance of the child welfare system.[1]

Department of Children and Families

The DCF's mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.[2] The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements.[3]

The DCF is required to deliver services by contract through private providers to the extent allowed by law and funding.[4] These private providers include community-based care lead agencies (CBCs) delivering child welfare services.

Community-Based Care Lead Agencies

Community-based care combines the outsourcing of foster care and related services to local nonprofits with increased local community ownership of service delivery and design.[5] CBCs are responsible for providing foster care and related services, including, but not limited to,

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[1] Office of Program Policy Analysis & Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report No. 06-50, June 2006, available at: https://oppaga.fl.gov/Documents/Reports/06-50.pdf.
[2] Section 20.19(1), F.S.
[3] *Id*.
[4] *Id*.
[5] Florida Department of Children and Families, *Community-Based Care*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care (last visited Jan. 10, 2024).

counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.[6] Because CBCs are to partner with community providers to meet the needs of children and families in their service area, CBCs contract with subcontractors for case management and direct care services to children and families.[7] The CBCs are to plan, administer, and coordinate the delivery of client services, ensure compliance with federal and state laws, rules, and regulations, and monitor subcontractors.[8] At present, there are 18 CBCs that each cover specific geographic areas within the state's 20 judicial circuits.[9]

A CBC is statutorily limited from directly providing more than 35 percent of all child welfare services in its catchment area unless it can demonstrate a justification for need to exceed the 35 percent threshold.[10] The local community alliance[11] in the CBC's service area must review the CBC's justification for need to exceed the threshold and recommend whether the DCF should approve or deny the justification.[12] Currently, nine CBCs utilize the waiver to exceed the 35 percent threshold.[13]

CBCs are required to perform several duties, including:

- Serve children referred to the CBC as a result of abuse, neglect, or abandonment reports to the central abuse hotline.
- Provide the DCF with accurate and timely information necessary for oversight.
- Follow financial guidelines developed by the DCF and provide for regular independent audits.
- Prepare and file all necessary court documents and attend dependency court proceedings.
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements.
- Maintain eligibility to receive all available federal child welfare funds.
- Adhere to child welfare best practices.
- Maintain written agreements with Healthy Families Florida entities in its service area to promote cooperative planning for the provision of prevention and intervention services.
- Comply with federal and state statutory requirements and agency rules in the provision of contractual services.
- Use authority to subcontract for the provision of services provided CBCs contribute to services and meet specified criteria.

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[6] Section 409.145(1), F.S.
[7] *Id*.
[8] Section 409.988, F.S.
[9] Florida Department of Children and Families, *Lead Agency Information*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 13, 2024).
[10] Section 409.988(1)(j), F.S.
[11] Section 20.19(5), F.S., requires the DCF, in consultation with local communities, to establish community alliances of the stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services.
[12] *Supra* note 10.
[13] Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.

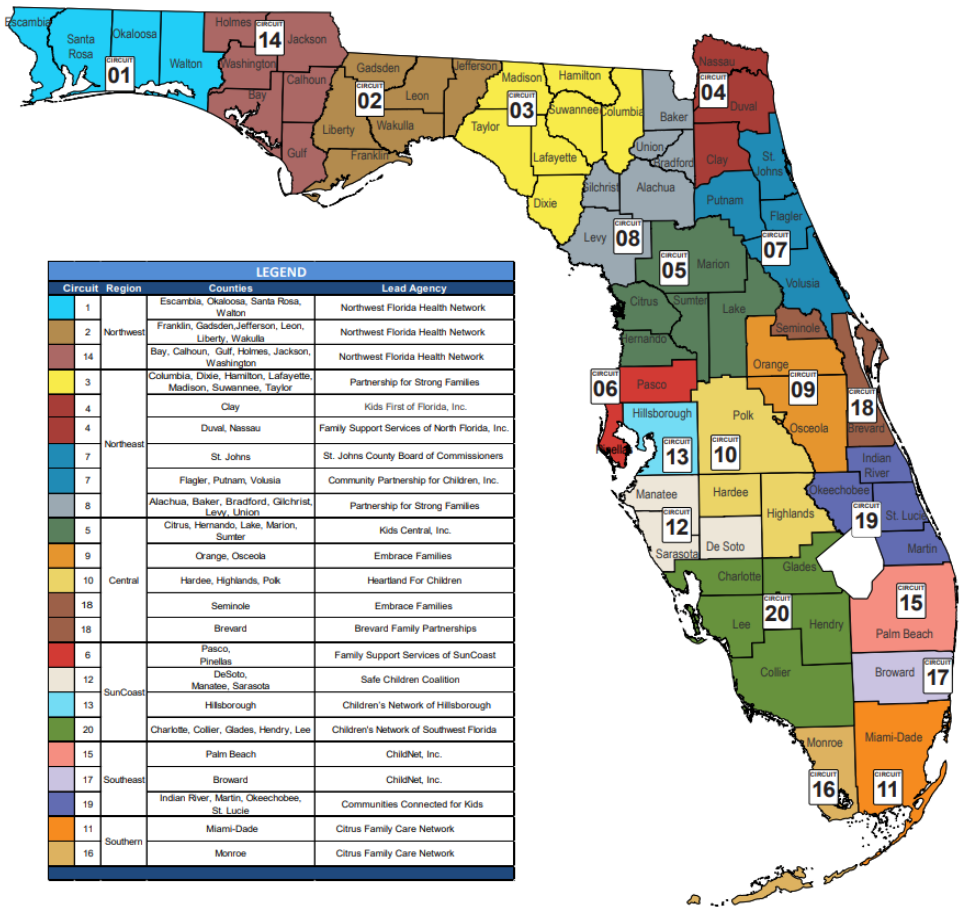
- Identify an employee to serve as a liaison with the community alliance and community-based and faith-based organizations interested in collaborating or offering services or other assistance on a volunteer basis to the children and families served by the CBC.
- Ensure that appropriate CBC staff and subcontractors are informed of the specific services or assistance available from local community-based and faith-based organizations.
- Identify it as a DCF contractor on its website and promotional literature.
- Ensure that it is addressing the unique needs of the fathers of children who are served by the CBC by employing a father-engagement specialist.
- Post information regarding case management services on its website by a specified date, including the average caseload of case managers for filled positions, the turnover rate for case managers and their supervisors for the previous 12 months, the percentage of required home visits completed, and performance on outcome measures required under s. 409.997, F.S., for the previous 12 months.[14]

There are minimum requirements with which CBCs must comply to be eligible to contract with the DCF, including:

- Being organized as a Florida corporation or a governmental entity.[15]
- Having a board of directors or board committee with authority to approve the CBC budget and hire a CBC executive director.[16]
- Demonstrating financial responsibility by having a plan for regular fiscal audits and securing a performance bond.[17]

The DCF contracts with the following CBCs as illustrated in the following map:[18]

[14] Section 409.988(1), F.S.
[15] Section 409.987(4)(a), F.S.
[16] Section 409.987(4)(b), F.S.
[17] Section 409.987(4)(c), F.S.
[18] Florida Department of Children and Families, *Lead Agency Information*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 13, 2024).



LEGEND			
Circuit	Region	Counties	Lead Agency
1	Northwest	Escambia, Okaloosa, Santa Rosa, Walton	Northwest Florida Health Network
2		Franklin, Gadsden,Jefferson, Leon, Liberty, Wakulla	Northwest Florida Health Network
14		Bay, Calhoun, Gulf, Holmes, Jackson, Washington	Northwest Florida Health Network
3	Northeast	Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor	Partnership for Strong Families
4		Clay	Kids First of Florida, Inc.
4		Duval, Nassau	Family Support Services of North Florida, Inc.
7		St. Johns	St. Johns County Board of Commissioners
7		Flagler, Putnam, Volusia	Community Partnership for Children, Inc.
8		Alachua, Baker, Bradford, Gilchrist, Levy, Union	Partnership for Strong Families
5	Central	Citrus, Hernando, Lake, Marion, Sumter	Kids Central, Inc.
9		Orange, Osceola	Embrace Families
10		Hardee, Highlands, Polk	Heartland For Children
18		Seminole	Embrace Families
18		Brevard	Brevard Family Partnerships
6	SunCoast	Pasco, Pinellas	Family Support Services of SunCoast
12		DeSoto, Manatee, Sarasota	Safe Children Coalition
13		Hillsborough	Children's Network of Hillsborough
20		Charlotte, Collier, Glades, Hendry, Lee	Children's Network of Southwest Florida
15	Southeast	Palm Beach	ChildNet, Inc.
17		Broward	ChildNet, Inc.
19		Indian River, Martin, Okeechobee, St. Lucie	Communities Connected for Kids
11	Southern	Miami-Dade	Citrus Family Care Network
16		Monroe	Citrus Family Care Network

The DCF must develop and maintain written policies and procedures for monitoring compliance with the services the CBCs provide under contract. The DCF is required to evaluate each CBC's programmatic, operation, and fiscal operations at least once annually.[19]

The DCF typically enters into 5-year contracts with CBCs, with the option for an extension or a renewal of up to five years or for the original term of the contract, whichever period is longer.[20] While entering into 5-year contracts has provided stability within the CBC system, it has also had the effect of reducing competition. For example, since the creation of CBCs, the DCF has conducted 19 procurements, 11 of which had only one entity submit a bid for the contract.[21] The DCF is currently in the process of procuring CBC services in 12 circuits for Fiscal Year 2024-25.[22]

[19] Section 409.996(19)(a), F.S.
[20] Section 409.987(3), F.S.
[21] Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.
[22] Florida Department of Children and Families, Invitation to Negotiate, Community-Based Care Lead Agencies, DCF ITN 2324 063

Funding

Section 409.990, F.S., requires that funding for a contract between DCF and CBC be through general revenue or other applicable state or federal funding sources. The DCF allocates core funding[23] to CBCs based on a statutory "equity model", which considers the proportion of child population, child abuse hotline workload, and children in care.[24]

In addition to annually evaluating CBC fiscal operations, current law requires the DCF to do several things to ensure that the CBCs are providing services within its allocated budget:

- Section 409.996, F.S., requires the DCF to annually conduct a comprehensive, multi-year review of the revenues, expenditures, and financial positions of all CBCs that cover the most recent two consecutive fiscal years. The review must include a comprehensive system-of-care analysis and the CBCs must develop and maintain a plan to achieve financial viability to accompany the DCF's review. The DCF must submit the review to the Governor, the Senate President, and the Speaker of the House of Representatives by November 1 each year.
- The Fiscal Year 2023-24 General Appropriations Act required each CBC to submit a detailed spending plan, approved by its board of directors, to the DCF for all projected expenditures for the current fiscal year. The spending plan must demonstrate that core expenditures will not exceed the appropriated amount of core funding and reserve a certain amount of funding for unanticipated expenses. The DCF cannot release additional funds outside the two-month advance until it has reviewed and approved a CBC's spending plan. At any point during the year, if a CBC's actual expenditures project an end-of-year deficit, the CBC must submit a revised spending plan to the DCF that reflects actions to be taken to remain within appropriated core funding for the remainder of the fiscal year.

The Fiscal Year 2023-24 GAA provides the following core service funding to CBCs[25]:

CBC Lead Agency	Circuit	FY 2023-24 Core Services Funding
Northwest Florida Health Network (Big Bend)	2, 14	$55,032,652
	1	$35,459,931
Partnership for Strong Families	3, 8	$31,401,300
Family Support Services of North Florida	4 (Duval, Nassau)	$49,018,528
Kids First of Florida	4 (Clay)	$12,525,871
St. Johns County Board of Commissioners	7 (St. Johns)	$7,683,739

[23] Section 409.997(1)(a), defines "core services funds" as all funds allocated to CBCs operating under contract with the DCF, with the following exceptions: funds appropriated for independent living; funds appropriated for maintenance adoption subsidies; Funds allocated by the DCF for protective investigations training; nonrecurring funds; designated mental health wrap-around services funds; funds for special projects for a designated CBC; and funds appropriated for the Guardianship Assistance Program under s. 39.6225, F.S.

[24] Section 409.991, F.S. provides that core services funds are calculated based on the proportion of the (a) child population weighted as five percent of the total; (b) child abuse hotline workload weighted as 35 percent of the total; and (c) children in care weighted as 60 percent of the total. Section 409.991(3), F.S., provides that beginning in the 2015-16 FY, 100 percent of the recurring core services funding must be based on the prior year recurring base core services funds, and any new funding be allocated as: (a) 70 percent of new funding among all CBCs and (b) 35 percent of new funding to CBCs below their equitable share.

[25] Chapter 2023-239, L.O.F, General Appropriations Act for Fiscal Year 2023-24, Specific Appropriation 328.

CBC Lead Agency	Circuit	FY 2023-24 Core Services Funding
Community Partnership for Children	7 (Flagler, Volusia, Putnam)	$43,440,511
Safe Children Coalition	12	$34,861,493
Family Support Services of Suncoast	6 (Pasco, Pinellas)	$87,553,887
Kids Central	5	$54,912,909
Embrace Families	9, 18 (Orange, Osceola, Seminole)	$60,761,737
Heartland for Children	10	$46,721,076
Brevard Family Partnerships	18 (Brevard)	$29,292,110
Communities Connected for Kids	19	$24,247,000
ChildNet	15 (Palm Beach)	$38,086,728
	17 (Broward)	$60,952,428
Children's Network of Southwest Florida	20	$53,746,134
Children's Network of Hillsborough	13	$75,448,412
Citrus Family Care Network	11, 16	$76,440,546
TOTAL		**$877,586,992**

Because the core services funding for each CBC was established based on the total expenditures by the DCF when the CBCs were created, significant core funding inequities have been institutionalized in the system of care. To mitigate financial risk, the Legislature created a CBC Risk Pool that allows CBCs to apply to the DCF for additional funding.[26] A committee that includes the DCF's secretary and three non-applicant CBC representatives review the risk pool applications.[27] The DCF may authorize risk pool funding to address:

- Significant changes in the number or composition of clients eligible to receive services.[28]
- Significant changes in the services that are eligible for reimbursement.[29]
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a CBC.[30]
- Significant changes in the mix of available funds.[31]

The Legislature added the "equity model" CBC funding model into statute in 2011 because the allocation of state or federal funds to CBCs was based primarily on the number of children in care with funding direction to the DCF through proviso in the General Appropriations Act (GAA).[32] In 2019, the Legislature directed the DCF and the CBCs to develop an alternative

[26] Section 409.990(8), F.S.
[27] *Id*.
[28] Section 409.990(8)(c)1., F.S.
[29] Section 409.990(8)(c)2., F.S.
[30] Section 409.990(8)(c)3., F.S.
[31] Section 409.990(8)(c)4., F.S.
[32] Chapter 2011-62, L.O.F. In Fiscal Year 2010-11, the allocation was based on four weighted factors: the number of children in poverty (30 percent); the number of reports the DCF's central abuse hotline that are either referred for investigation or whose findings have been verified (30 percent); the number of children in out-of-home care (30 percent); and contribution to a safe reduction in out-of-home care (10 percent).

funding model.[33] This produced the Florida Funding Model for Children (FMC) that calculated the cost of providing services by setting case worker caseload ratios, an incentive for prevention spending, and a target to reduce use of group care and a per child cost calculation.[34] The Legislature, through proviso in the GAA, used the FMC methodology to allocate increases in CBC core services funding of $25 million in Fiscal Year 2019-2020 and $150 million in Fiscal Year 2022-2023.[35]

Oversight and Monitoring

The DCF is responsible for monitoring and overseeing CBCs to ensure that they are delivering services in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in its strategic plan.[36] The DCF must, at a minimum, evaluate each of the CBCs under contract annually.[37] The evaluation must cover the programmatic, operational, and fiscal operations of the CBC.[38]

CBC contracts specify required performance measures that generally align with the state and federal measures.[39] The DCF contract manager must periodically identify whether any gaps exist between actual and required CBC performance. If contractor performance is insufficient, the DCF may allow a reasonable time for correction. If the deficiencies are not resolved and there are no extenuating circumstances, the DCF must terminate the contract and it may not contract again with the same provider during the next 24 months.[40]

Section 409.996(1)(d), F.S., requires CBC contracts to include tiered interventions the DCF may use if CBCs fail to comply with contractual terms or in the event of performance deficiencies. Such interventions include, but are not limited to:

- Enhanced monitoring and reporting;
- Corrective action plans;
- Requirements for contracted providers to accept technical assistance and consultations from the DCF;
- Financial penalties that require a CBC to reallocate funds from administrative costs to direct care for children; and
- Early termination of contracts.

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[33] Chapter 2019-115, L.O.F., General Appropriations Act for Fiscal Year 2019-20, Specific Appropriation 326.
[34] Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.
[35] In Fiscal Year 2022-23, the Florida Legislature addressed the funding inequities by appropriating $150 million in increases to core funding to bring all CBCs up to 100 percent funding levels to ensure that each CBC has the tools to best serve the children and families in their respective service area. [*Supra* note 34] Even with this $150 million increase in core funding, at the request of certain CBCs, the Legislature appropriated an additional $18.5 million in Back of Bill funding to address CBC funding deficits incurred in Fiscal Year 2022-23. [*Supra* note 25, Section 88.]
[36] Section 409.996, F.S.
[37] Section 409.996(21)(a), F.S.
[38] *Id*.
[39] November 2022 CBC Services Contract, Contract AJ500, pp. 40-44, available at: https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=600000&ContractId=AJ500&Tab=4.
[40] Section 402.7305(3)(f), F.S.

The DCF may provide technical assistance and consultation to CBCs as necessary for the achievement of performance standings, including, but not limited to, providing additional resources to assist a CBC in implementing best practices or instituting operational efficiencies.[41]

The DCF may impose financial penalties on a CBC that does not comply with a corrective action plan.[42] The DCF must request corrective action on a provider when the delivery of services is unacceptable or the provider is not in compliance with contractual terms and conditions. The DCF can impose financial penalties for failure to comply with a corrective action plan, unless the DCF determines that extenuating circumstances exist.[43] The imposed financial penalties are based on the severity of the noncompliance, nonperformance, or unacceptable performance that generated the need for the corrective action plan.[44] A provider is prohibited from paying a financial penalty with funds intended to be used, or which are budgeted, to provide services to clients and cannot reduce the amount of quality of services delivered to clients as a result of the imposition of a financial penalty.[45]

The DCF may also petition a court for the appointment of a receiver for a CBC if:
- The CBC is operating without a license as a child-placing agency;
- The CBC has given less than 120 days' notice of its intent to cease operations, and arrangements have not been made for another CBC or the DCF to continue the uninterrupted provision of services;
- The DCF determines that conditions exist in the CBC which present an imminent danger to the health, safety, or welfare of the dependent children under the CBC's care or supervision; or
- A CBC is struggling to meet its financial obligations to its employees, contractors, or foster parents as supported by issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities.[46]

Audits

Over the years, the Governor's Office of Inspector General (OIG) and the DCF's Office of Inspector General (DCF OIG) have conducted several audits of the CBCs.

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[41] Section 409.996(6), F.S.
[42] Section 402.73(1), F.S.; *See also* R. 65C-29.001, F.A.C. All contracts entered into by the DCF for services shall contain a notice that penalties shall be imposed for failure to implement or to make acceptable progress on corrective action plans develop as a result of noncompliance, non-performance, or unacceptable performance with the terms and conditions of a contract.
[43] Rule 65C-29.001(3)(a), F.A.C.
[44] Rule 65C-29.001(3)(b), F.A.C. The penalty, if imposed, shall not exceed ten percent of the total contract payments during the period in which the corrective action plan has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance that is determined to have a direct effect on client health and safety shall result in the imposition of a ten percent penalty of the total contract payments during the period in which the corrective action plan was has not been implemented or in which acceptable progress toward implementation has not been made. Noncompliance involving the provision of service not having a direct effect on client health and safety shall result in the imposition of a five percent penalty. Noncompliance as a result of unacceptable performance of administrative tasks shall result in the imposition of a two percent penalty.
[45] Rule 65C-29.001(5), F.A.C.
[46] Section 409.994(1), F.S.

On February 20, 2020, Florida's Governor issued an executive order requiring the OIG to review entities which had sole-source public-private agreements with state agencies; received more than 50 percent or more of their budget from state and federal funds; and had compensation totals exceeding federal or state law and regulations.[47] The OIG issued a report finding nine CBCs[48] had compensation that potentially exceeded statutory limits.[49] The report also identified additional areas of concern related to CBC employees and related parties.[50] At the request of the OIG, the DCF OIG conducted a review of the nine CBCs and identified two CBCs[51] for which executive leadership compensation appeared to exceeded state limits.[52]

On December 3, 2021, the DCF OIG issued a report focused on the creation of management companies and other related parties within the CBCs.[53] The report found that "the purposes and functions of these related organizations are not clear and pose risks to the DCF fulfilling its mission."[54] Based on these findings, the DCF contracted with two auditing firms to conduct financial and operation examinations on all CBCs. The DCF released the findings for six of the CBCs on August 22, 2023.[55] Key findings include:

- Noncompliance with competitive procurement requirements for non-related and related entities.
- Overbilling related to PPP Loan Forgiveness.
- Board approval of departmental deficit budgets.
- Excessive compensation.
- Establishment of sub-contracts to related parties that provide administrative support and management services.
- Related parties holding real estate that may have been purchased through the use of state/federal funds or acquired based on the existence of those funding streams.

Another key finding was a significant overlap of key individuals serving on both CBC board of directors and the board of a CBC related party. Additionally, CBC boards were not providing high level fiduciary oversight of CBC operations and budgets. Certain executive leadership

[47] Executive Order 20-44 arose from the Florida Coalition Against Domestic Violence, Inc., using funds from the DCF to subsidize excessive executive leadership team compensation payouts.
[48] Big Bend Community Based Care [d/b/a North West Florida Health Network (NWFHN)]; ChildNet, Inc.; Citrus Health Network, Inc.; Community Based Care of Brevard, Inc.; Eckerd Youth Alternatives (d/b/a Eckerd Connects); Embrace Families Community Based Care, Inc.; Florida Support Services of North Florida (FSSNF); Lakeview Center, Inc.; and Safe Children Coalition, Inc. *See* Executive Office of the Governor, Office of the Chief Inspector General, Executive Order 20-44, *Data Compilation and Statutory Compensation Limit Review*, CIG 2021-01-25-0017, June 30, 2021, pg. vi, available at https://www.flgov.com/wp-content/uploads/2021/06/Final-Report-with-Responses-6.30.21-2.pdf.
[49] Executive Office of the Governor, Office of the Chief Inspector General, Executive Order 20-44, *Data Compilation and Statutory Compensation Limit Review*, CIG 2021-01-25-0017, June 30, 2021, pg. vi., available at https://www.flgov.com/wp-content/uploads/2021/06/Final-Report-with-Responses-6.30.21-2.pdf.
[50] *Id*.
[51] Eckerd Connects and Family Support Services of North Florida.
[52] *Supra* note 49.
[53] Florida Department of Children and Families, Office of Inspector General, Internal Audit, Project #A-1819DCF-043, December 3, 2021, available at https://eds.myflfamilies.com/IGRPTS/AuditFileView.aspx.
[54] *Id*.
[55] Florida Department of Children and Families, Community-Based Care Lead Agencies Audit Findings, available at https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings (last visited Jan. 12, 2024).

positions were also integrally involved in related parties creating the potential for conflict of interest in CBC contracts for services with such related parties.[56]

The DCF took corrective action against the six CBCs because of the examinations' findings.

Executive Compensation

CBC expenditures must comply with financial guidelines developed by the DCF and with federal and state law. Current law prohibits a CBC administrative employee in excess of 150 percent of the annual salary paid to the DCF's secretary from state-appropriate funds, including state-appropriated federal funds.[57] The law does not prohibit any party from providing cash that is not appropriated state funds to a CBC administrative employee.[58] The Legislature codified the statutory salary cap into law in 2015 after the Florida Auditor General found instances where salary payments, including bonuses and leave balances, did not appear to be properly supported or calculated in accordance with established CBC policy or state law.[59]

CBCs must also comply with the federal salary rate limit because CBCs receive federal pass-through awards from the DCF. Federal funds from the United States Health and Human Services (HHS) may not be used to pay the salary, or any percentage of salary, to an individual in excess of the Executive Level II rate, currently $212,100.[60] Therefore, the maximum amount a CBC executive may be compensated with combined state and federal funds is $315,000, of which only $212,100 can be federal funds.[61]

The DCF is required to publish the compensation information for a CBC's chief executive, chief administrator, or other chief officer.[62] The following table includes the *total* compensation for CBC executive officers as of the last annual reporting to the DCF.[63]

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[56] Florida Department of Children and Families, Community-Based Care Lead Agencies Audit Findings, available at https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings (last visited Jan. 12, 2024).
[57] Section 409.992(3), F.S.
[58] *Id*.
[59] Florida Auditor General, Department of Children and Families and Selected Community-Based Care Lead Agencies, Oversight of Foster Care and Related Services, Operational Audit, Report 2015-156, March 2015, available at: https://flauditor.gov/pages/pdf_files/2015-156.pdf.
[60] Email from Sam Kerce, Legislative Affairs Director, Florida Department of Children and Families, re: Questions, on file with the Senate Children, Families, and Elder Affairs Committee. *See also* Health Resources & Services Administration, Grants Policy Bulletin, Legislative Mandates in Grants Management for FY 2023, Feb. 1, 2023, available at: https://www.hrsa.gov/sites/default/files/hrsa/grants/manage/legislative-mandates-grants-management-2023.pdf.
[61] Florida Department of Children and Families, 2024 Agency Analysis, pg. 4. (on file with the Children, Families, and Elder Affairs Committee). The nine CBCs that currently exceed the 35 percent threshold include: Kids First of Florida, Inc.; Childnet, Inc. (Palm Beach); Childnet, Inc. (Broward); Community Partnership for Children, Inc.; Brevard Family Partnerships; Family Integrity Program (St. Johns County); Kids Central, Inc.; Safe Children Coalition; and Children's Network of Southwest Florida.
[62] Section 409.996(4)(a)1., F.S.
[63] Florida Department of Children and Families, *Lead Agency Information*, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 13, 2024).

CBC Lead Agency	Circuit	CEO	CFO	COO
Northwest Florida Health Network (Big Bend)	1, 2,14	$563,842	$272,261	$217,194
Partnership for Strong Families	3, 8	$169,043	$116,277	$105,445
Family Support Services of North Florida	4 (Duval, Nassau)	$230,125	$146,978	Vacant
Family Support Services of Suncoast	6 (Pasco, Pinellas)			
Kids First of Florida	4 (Clay)	$113,656	$113,040	$101,656
St. Johns County Board of Commissioners	7 (St. Johns)	N/A	N/A	N/A
Community Partnership for Children	7 (Flagler, Volusia, Putnam)	$205,000	$114,500	$122,360
Safe Children Coalition	12	$220,000	$110,000	$145,000
Kids Central	5	$218,624	$177,786	$162,350
Embrace Families	9, 18 (Orange, Osceola, Seminole)	$332,023	$206,520	$254,635
Heartland for Children	10	$175,000	$130,000	$152,499
Brevard Family Partnerships	18 (Brevard)	$157,757	$103,716	$129,024
Communities Connected for Kids	19	$169,161	$141,474	$145,757
ChildNet	15 (Palm Beach)	$266,492	$201,956	$212,630
	17 (Broward)			
Children's Network of Southwest Florida	20	$209,830	$162,931	$163,513
Children's Network of Hillsborough	13	$197,600	$166,400	$166,400
Citrus Family Care Network	11, 16	$263,800	$176,342	$203,059

Conflicts of Interest

The outsourced nature of the DCF services, including child welfare, requires the DCF to engage in contract management functions focused on accountability. One area of possible lack of accountability is conflicts of interest between a CBC member, officer, or relative and CBC subcontractor.

Section 409.987(7), F.S., requires a process for disclosing and eliminating any transaction or activity that could reasonably be construed to be a conflict of interest for a member, officer, or relative of a CBC. This requirement applies to situations in which a CBC board member or officer, or relative within the third degree of consanguinity by blood or marriage of a member or officer:

- Enters into a contract or other transaction for goods or services with the CBC.
- Holds a direct or indirect interest[64] in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the CBC or proposes to enter into a contract or other transaction with the CBC.

[64] "Indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under Ch. 112, Part III, F.S.

- Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship with a board member or officer, or relative of the board member or officer of the CBC.

Any activity that involves a contract for goods and services, a purchase of any real or tangible property, an agreement to engage with the CBC for a benefit, or an in-kind contribution, or if a CBC board member or officer notifies the CBC board of a potential conflict of interest under an existing CBC contract, the proposed activity or potential conflict of interest must be presented to the CBC board for approval which includes:

- Listing the proposed activity on the CBC board's agenda for the next general or special meeting;
- Providing copies of all contracts and relevant documents related to the proposed transaction; and
- Allowing the CBC board an opportunity to approve or disapprove the conflict of interest by a vote of two-thirds of all other members present.[65]

If the CBC board votes against the proposed activity, the CBC board member or officer must notify the CBC board in writing of his or her intention, or the relative's intention, not to pursue the proposed activity or the CBC board member or officer must resign. If the CBC board finds a CBC member or officer has violated the requirements for approval, the CBC board member or officer will be deemed removed from the CBC board before the next scheduled board meeting.

If the CBC board does not approve a conflict of interest, the parties to the activity where the conflict of interest exist may opt to cancel the activity or resign from the CBC board or office before the next scheduled board meeting.[66]

A contract entered into between a CBC board member or officer, or relative of a CBC board member or officer, and a CBC which has not been properly disclosed as a conflict of interest or potential conflict of interest is voidable and terminates upon the filing of a written notice to the CBC board of directors.[67]

Findings from the most recent CBC financial and operational examinations included concerns of significant overlap of key individuals serving on both a CBC board of directors and a related party board and executive leadership positions being integrally involved in multiple related parties creating the potential for conflict of interest in CBC contracts for services with related parties.[68] Findings also noted a perception that CBC board of directors were not providing proper fiduciary oversight of CBC operations and budgets.[69]

[65] Section 409.987(7)(c), F.S.
[66] Section 409.987(7)(d)2., F.S.
[67] Section 409.987(7)(f), F.S.
[68] Florida Department of Children and Families, Office of Inspector General, Internal Audit, Project #A-1819DCF-043, December 3, 2021, available at https://eds.myflfamilies.com/IGRPTS/AuditFileView.aspx.
[69] *Id*.

Competitive Solicitation for Commodities or Contractual Services

Section 287.057, F.S., requires state agencies that wish to procure commodities or contractual services in excess of $35,000 to use a competitive solicitation process. A competitive solicitation is a process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of procurement method.[70] Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid,[71] request for proposals,[72] or invitation to negotiate.[73]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 409.016, F.S., to create a new definition of "Management functions" to mean:

- Planning, directing, organizing, coordinating, and carrying out oversight duties of a lead agency; and
- Contracting for officer or director level staffing in performance of the planning, directing, organizing, coordinating, and carrying out oversight duties of the lead agency.

This definition is used throughout the bill to give effect to the provisions of the bill that reduce the ability for a lead agency to contract officer or director level positions and reduce the use of and potential conflicts associated with related parties.

Section 2 of the bill amends s. 409.987, F.S., to limit the DCF's ability to extend a lead agency contract for a period of one to five years, if the lead agency has met the monitored performance expectations.

The bill requires a CBC board of directors to ensure accountability and transparency of the system of care, which includes fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse.

The bill requires the CBC to ensure that board members participate in annual training related to their responsibilities. The DCF must set forth minimum training requirements in the contract with the CBC.

The bill expands those who may have a conflict of interest to include a CBC director or a relative of a director and creates a definition for "related party" to conform to changes made in this section.

The bill requires a CBC board of directors to disclose to the DCF any known, actual, or potential conflicts of interest.

[70] Section 287.012(6), F.S.
[71] Section 287.057(1)(a), F.S.
[72] Section 287.057(1)(b), F.S.
[73] Section 287.057(1)(c), F.S.

The bill prohibits CBCs from entering into a contract or be a party to any transaction with a related party if a conflict of interest is not properly disclosed. The bill prohibits any contract with a related party for officer or director level staffing to perform management functions. The DCF must specify the administrative functions a CBC may subcontract in the contract between the DCF and CBC.

The bill allows a CBC to contract with a related party as long as the fee, rate, or price paid by the CBC does not exceed fair market value, and any known actual or potential conflicts of interest are disclosed to the DCF.

The bill removes obsolete language related disclosure of conflicts of interest that occur by a specific date.

The bill requires DCF to create contractual penalties of $5,000 per occurrence when a CBC does not disclose a known and potential conflict of interest to the DCF in the process described in s. 409.987(b), F.S.

The bill requires DCF to create contractual penalties for when a CBC procures a contract that was a conflict of interest and not disclosed to the DCF of $25,000 for a first offense; $50,000 for a second or subsequent offense; and removal of a board member that did not disclose a known conflict of interest. The bill requires the penalties to apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, single-source contracts, and contracts that do not meet the minimum threshold for formal procurement. The bill requires re-procurement of any contract procured in violation of the disclosure requirements.

The bill requires a CBC to post a fidelity bond to cover any assessed penalties and costs associated with reprocurement related to a failure to disclose a conflict of interest under the new conflict of interest provisions.

These provisions all focus on the corporate function and business operations of CBCs, clarifying and detailing requirements around reporting, conflicts of interest, board of director functions, and financial penalties.

Section 3 of the bill amends s. 409.988, F.S., to require CBCs to comply with regular, independent auditing of their financial activities, including any requests for records associated with such financial audits within the timeframe established by the DCF or its contracted vendors. It also requires the results of financial audits to be provided to the community alliance in the CBC's service area rather than the CBC's financial information being provided to the community alliance.

The bill prohibits CBCs from subcontracting with a related party for officer or director level staffing to perform management functions, and requires any contract with a non-related party for these functions to adhere to the executive compensation provisions in s. 409.922(3), F.S.

The bill prohibits a CBC from providing more than 35 percent of direct child welfare services unless there is a lack of qualified providers available to perform the necessary services. The bill

requires an approval period to exceed the 35 percent threshold be limited to 2 years. After this 2-year period, the CBC may submit annual 1-year extensions with a detailed report of all efforts to recruit a qualified provider to perform the services for that geographic service area. If the DCF determines the lead agency is not making a good faith effort to recruit a qualified provider they must deny the extension and require reprocurement.

The bill expands the data that a CBC must publish on its website to include:
- The number of unlicensed placements for the previous month;
- The percentages and trends for foster parent and group home recruitment and licensure for the previous month;
- The percentage of families being served through family support, in-home, and out-of-home services for the previous month;
- The percentage of cases that converted from nonjudicial to judicial for the previous month; and
- Children's legal services staffing rates.

These provisions focus on the business operations of CBCs and tighten requirements around procurement, the provision of services, and transparency.

Section 4 of the bill repeals s. 409.991, F.S., that details the allocation of funding for Community-based care lead agencies, as the bill has language implementing a new funding allocation model.

Section 5 of the bill creates s. 409.9913, F.S., to create a new funding allocation methodology for CBCs. The bill directs DCF to work in collaboration with CBCs and child welfare providers to develop this new funding methodology. At a minimum, the methodology must:
- Be actuarily sound;
- Be reimbursement based;
- Be designed to incentivize efficient and effective CBC operations, prevention, family preservation, and child permanency;
- Consider variable costs for in-home and out-of-home care, prevention services, operational costs, and fixed costs; and
- Be scalable to account for regional cost-of-living differences.

The bill itemizes which variables are to be considered "operational and fixed costs" and reaffirms that "core services funding" refers to all funds allocated to a CBC with certain exceptions. Operational and fixed costs means administrative expenditures (including, but not limited to, information technology and human resources), lease payments, asset depreciation, utilities, and mandated activities such as training, quality improvement, and contract management. Core services funds do not include funding a CBC receives for independent living services, adoption subsidies, child protective investigation training, nonrecurring funds, mental health wrap-around services, special projects, and the Guardianship Assistance Program.

The bill includes three reporting requirements to present the new methodology, to provide monthly progress reports on the development of the methodology, and to provide annual,

recommended updates to the methodology that account for any changes to variable costs that serve as the basis for each CBC allocation:

- From July 2024 through October 2024, DCF is required to submit monthly updates to the Governor and Legislature on the activities and progress in developing the new funding methodology.
- By December 1, 2024, the bill requires DCF to submit the final report on the new methodology to the Governor and Legislature for consideration during the 2025 Session. The report shall describe the proposed methodology, the data used to develop the methodology, and include proposed rates and allocations for each CBC that may not exceed the total amount of funding provided in the General Appropriations Act for Fiscal Year 2024-25. The report shall also include risk mitigation recommendations should a CBC's proposed allocation negatively impact operations or result in a reduction of services to children.
- Beginning October 31, 2025, the bill requires DCF to submit a report annually including recommended adjustments to the proposed methodology that incorporate fluctuations to the underlying criteria used to calculate the allocations.

The bill subjects the new funding methodology to the state government planning and budgeting requirements of Chapter 216. The bill authorizes DCF to report on the proposed rates and total allocations for each CBC that reflect any additional core service funding requested by DCF in legislative budget requests.

Beginning with FY 2025-26, the bill requires the Legislature to allocate funding to the CBCs through the General Appropriations Act with due consideration given to the funding methodology developed by DCF, in collaboration with the CBCs and child welfare providers.

The bill prohibits DCF from changing the allocation of funds to a CBC as provided in the General Appropriations Act without legislative approval. However, the bill authorizes DCF to approve additional risk pool funding for a CBC.

Section 6 of the bill amends s. 409.992, F.S. to require CBCs to competitively procure all contracts consistent with the simplified acquisition threshold in federal rule (2 C.F.R. part 200), and requires competitive procurement of all contracts with related parties in excess of $35,000. The bill also requires financial penalties or sanctions for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services. The bill requires the DCF to establish and incorporate the financial penalties or sanctions into the CBC contracts.

The bill requires the contract between the DCF and CBCs to delineate the rights and obligations of the CBC concerning the acquisition, transfer, or other disposition of real property, at a minimum these rights and obligations must require:

- The CBC to follow all federal law on the acquisition, transfer, or other disposition of real property acquired by the CBC with federal dollars.
- The DCF to obtain the rights to and ownership of all real property acquired by the CBC using state funds.
- The DCF to approve any sale, transfer, or disposition of real property acquired and held by the CBC using state funds.

- The DCF to retain all rights to and ownership of all real property acquired and held by the CBC upon termination of the CBC contract.

The bill limits the compensation a CBC administrative employee may receive to a capped total amount not to exceed 150 percent of the annual salary paid to the secretary of the DCF, regardless of the number of contracts a CBC executes with the DCF. This is currently $315,000 of combined state and federal funds.

Section 7 of the bill amends s. 409.994, F.S., to expand the situations in which the DCF can petition the court to initiate receivership of a CBC. The bill expands when the DCF may petition the court for receivership to include when a CBC is *unlikely to meet* its financial obligations, and not simply *cannot* meet its financial obligations.

Section 8 of the bill amends s. 409.996, F.S. to create flexibility for the DCF to take action against a CBC by removing a tiered intervention and graduated penalties process and instead requires contractual actions and financial penalties for performance deficiencies. The bill requires the DCF, my January 1, 2025, to include the following in CBC contracts:

- Contractual actions for failure to comply with contract terms or in the event of performance deficiencies, as determined by the DCF. Such contractual actions include, but are not limited to:
  - Enhanced monitoring and reporting.
  - Corrective action plans.
  - Requirements to accept technical assistance and consultation from the DCF.
  - Financial penalties for failure to comply with contractual obligations that are directed to the DCF. The DCF must use these funds to support and provide services to children and families in the geographic services area of the lead agency from which the funds were obtained.

Section 9 of the bill requires the DCF to submit two reports to the Governor, President of the Senate, and Speaker of the House on the rules and policies adopted and other actions taken to implement the requirements of the bill. The first report is due September 30, 2024 and the second is due February 1, 2025.

Section 10 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is an indeterminate fiscal impact on the community-based care lead agencies (CBCs) due to the requirement to post a fidelity bond to cover potential financial penalties included in the bill.

The bill has no fiscal impact for FY 2024-25 as the only requirements during this fiscal year are for reports providing monthly updates on the progress of developing the methodology and for the submission of the proposed funding methodology. For FY 2025-26, the bill specifies that the sum of the proposed allocations for each CBC may not exceed the total amount appropriated to CBCs for Fiscal Year 2024-25; however, to the extent that the proposed methodology suggests an amount to each CBC that is different that its FY 2024-25 allocation, there may be either a positive or negative fiscal impact to individual lead agencies.

The bill does not require the Legislature to adopt the proposed methodology for FY 2025-26, but requires due consideration of such when developing the General Appropriations Act for FY 2025-26. Furthermore, while the bill specifies that each annual update may not exceed the total provided to CBCs in the prior fiscal year, it does not preclude DCF from making a request for additional CBC funding through the Legislative Budget Request process.

C. Government Sector Impact:

The bill has no fiscal impact on state government expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 409.016, 409.987, 409.988, 409.992, 409.994, and 409.996 of the Florida Statutes.

This bill creates s. 409.9913 of the Florida Statutes.

This bill repeals s. 409.991 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/CS by Fiscal Policy on February 27, 2024:
The committee substitute:

- Creates a definition for the term "management functions" and revises the definition for the term "related party."
- Authorizes DCF to extend 5-year community-based care (CBC) lead agency contracts for a period of 1-5 years if the CBC lead agency meets performance expectations.
- Requires DCF to establish minimum training criteria in CBC lead agency contracts.
- Prohibits CBC lead agencies from contracting or being a party to a transaction with a related party that was not properly disclosed to DCF.
- Revises penalties related to disclosure of conflicts of interest, to include removal of a board member that fails to disclose a known conflict, and penalty amounts.
- Requires the CBC to post a fidelity bond to cover any costs associated with penalties for failure to disclose conflict of interest.
- Authorizes CBC lead agencies to subcontract with related parties so long as the fee, rate, or price being paid does not exceed the fair market value of the commodity or service.
- Requires the CBC lead agencies to report monthly on children's legal service staffing rates.
- Repeals s. 409.991, F.S., relating to the allocation of funds for CBC lead agencies.
- Requires contracts between DCF and CBC lead agencies to address the acquisition, transfer, or other disposition or real property during the contract term and sets the minimum requirements of those rights and obligations.
- Preserves the "imminent danger" threshold in current law relating to DCF's authorization to petition a court for a receivership of a CBC lead agency.
- Requires the lead agency, after the initial two year approval, to submit annual extension requests with a detailed report of all efforts to recruit a qualified provider and requires DCF to deny that extension and require reprocurement if the DCF determines the CBC is not making good faith efforts to recruit a qualified provider.

CS/CS by Appropriations Committee on Health and Human Services on February 13, 2024:
The committee substitute:

- Requires the Department of Children and Families (DCF) to use an actuarial-based, three-tiered payment model for the allocation of core services funds to community-based care lead agencies (CBCs).
- Prohibits a CBC, under contract with the DCF, from subcontracting for management and oversight functions. Requires that the contract between the CBC and the DCF detail the administrative functions and services the CBC may subcontract for.
- Requires a CBC that received a DCF temporary exemption to exceed the 35% threshold for directly providing child welfare services, to submit quarterly reports during the exemption period to the DCF and the community alliance, showing its efforts to recruit providers to the geographic service area.

CS by Children, Families, and Elder Affairs on January 17, 2024:
The committee substitute adds the following provisions:

- Requiring CBC board members to complete annual training, as approved by the DCF, on their responsibilities.
- Include a CBC director, or a relative of a CBC director, to persons who can have a conflict of interest.
- Retaining current statutory language on the process of a CBC disclosing a conflict of interest to the DCF and allowing the DCF to impose civil penalties if a CBC does not properly disclose known or potential conflicts of interest as required by that process.
- Requiring CBC board members to disclose any known, actual, or potential conflicts of interest.
- Requiring CBCs to competitively procure all contracts with related parties over $35,000.
- Requiring the DCF to impose civil penalties against a CBC that procures a contract without proper disclosure of a conflict of interest on any contract entered into by the CBC, regardless of the method of procurement, including, but not limited to, formal procurement, single-source contract, and contracts that do not meet the minimum threshold for formal procurement.
- Requiring subcontracts over $250,000 to comply with the competitive procurement process.
- Allowing a CBC to exceed the threshold of providing more than 35 percent of child welfare services in its service area if there is a lack of viable providers and limits the approval to exceed the 35 percent threshold to two years.
- Delaying implementation of the CBC funding model changes until July 1, 2025.
- Including a list of Tier 1 operational base costs in the actuarially sound funding model.
- Requiring a CBC to return any funds from the sale, transfer, or other dispossession of real property to the DCF.
- Updating a cross-reference for early termination of a CBC contract.
- Retaining the requirements that the DCF must submit an annual report on the child welfare results-oriented accountability program.

The committee substitute removes the following provisions:

- Requiring CBCs to submit certain judicial documents to the DCF attorneys within specific timeframes.

- Requiring CBCs to submit spending plans to the DCF for approval prior to receiving allocated funds.
- Allowing a written certification by the DCF's secretary to serve as prima facie to file a petition for receivership of a CBC.
- Requiring CBC contracts to include sanctions or disincentives for failure to comply with specific items.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (3) and (4) of section 409.016, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and new subsection (3) is added to that section, to read:

409.016 Definitions.—As used in this chapter:

(3) "Management functions" means:


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(a) Planning, directing, organizing, coordinating, and carrying out oversight duties of the lead agency;

(b) Contracting for officer or director level staffing in performance of the planning, directing, organizing, coordinating, and carrying out oversight duties of the lead agency.

(4) ~~(3)~~ "Secretary" means the secretary of the Department of Children and Families.

(5) ~~(4)~~ "Social and economic services," within the meaning of this chapter, means the providing of financial assistance as well as preventive and rehabilitative social services for children, adults, and families.

Section 2. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 409.987, Florida Statutes, are amended to read, and paragraph (g) is added to subsection (7) of that section, to read:

409.987 Lead agency procurement; boards; conflicts of interest.—

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies. The department may only extend for a period of one to five years, in accordance with s. 287.057, if the lead agency has met performance expectations within the monitoring evaluation.

(4) In order to serve as a lead agency, an entity must:

(a) Be organized as a Florida corporation or a governmental entity.

(b) Be governed by a board of directors or a board committee composed of board members. Board members shall provide oversight and ensure accountability and transparency for the



system of care. The board of directors shall provide fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse. The board of directors shall act in accordance with s. 617.0830. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. The lead agency shall ensure that board members participate in annual training related to their responsibilities. The department shall set forth minimum training criteria in the contracts with the lead agencies. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

1. At least 75 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must be composed ~~consist~~ of persons residing within the service area of the lead agency.

2. The powers of the board of directors or board committee include, but are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the



power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.

(c) Demonstrate financial responsibility through an organized plan for regular fiscal audits; ~~and~~ the posting of a performance bond; and the posting of a fidelity bond to cover any costs associated with reprocurement and the assessed penalties related to a failure to disclose a conflict of interest under subsection (7).

(7)(a) As used in this subsection, the term:

1. "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with a lead agency for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.

2. "Conflict of interest" means when a board member, director, or ~~an~~ officer, or a relative of a board member, director, or ~~an~~ officer, of a lead agency does any of the following:

a. Enters into a contract or other transaction for goods or services with the lead agency.

b. Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the lead agency or proposes to enter into a contract or other transaction with the lead agency. For purposes of this paragraph, the term "indirect interest" has the same meaning as



in s. 112.312.

c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member, director, or officer, or relative of the board member, director, or officer, with the lead agency. For purposes of this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members or officers of the lead agency in connection with their service on the board.

3. "Related party" means any entity of which a director or an officer of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary firm, parent entity, associate firm, or joint venture.

4.~~3.~~ "Relative" means a relative within the third degree of consanguinity by blood or marriage.

(b)1. For any activity that is presented to the board of a lead agency for its initial consideration and approval ~~after July 1, 2021~~, or any activity that involves a contract that is being considered for renewal ~~on or after July 1, 2021, but before January 1, 2022~~, a board member, a director, or an officer of a lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or a contract is renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted on by the board without prior notice as required under paragraph (c). The board shall disclose any known actual or



potential conflicts to the department.

2. A lead agency may not enter into a contract or be a party to any transaction with related parties if a conflict of interest is not properly disclosed. A lead agency may not enter into a contract with a related party for officer or director level staffing to perform management functions. The contract with the department and lead agency must specify the administrative functions and services that the lead agency may subcontract ~~For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer of the lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021~~.

3. Subject to the requirements of subparagraph 2. of this subsection, a lead agency may enter into a contract or be a party to any transaction with related parties as long as the fee, rate, or price paid by the lead agency for the commodities or services being procured does not exceed the fair market value for such commodities or services. The lead agency shall disclose any known actual or potential conflicts to the department.

(g) All department contracts with lead agencies shall contain the following contractual penalty provisions:

1. Penalties in the amount of $5,000 per occurrence shall be imposed for each known and potential conflict of interest, as described in paragraph (b), which is not disclosed to the department.

2. If a contract is executed for which a conflict of interest was not disclosed to the department before execution of


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the contract, the following penalties apply:

i. A penalty in the amount of $25,000 for a first offense.

ii. A penalty in the amount of $50,000 for a second or subsequent offense.

iii. Removal of the board member that did not disclose a known conflict of interest.

3. The penalties for failure to disclose a conflict of interest under subparagraph (1) and (2) apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, single-source contracts, and contracts that do not meet the minimum threshold for formal procurement.

4. A contract procured for which a conflict of interest was not disclosed to the department before execution of the contract shall be reprocured. The department shall recoup from the lead agency expenses related to a contract that was executed without disclosure of a conflict of interest.

Section 3. Paragraphs (c), (j), and (k) of subsection (1) of section 409.988, Florida Statutes, are amended to read:

409.988 Community-based care lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(c) Shall follow the financial guidelines developed by the department and shall comply with regular, independent auditing of its financial activities, including any requests for records associated with such financial audits within the timeframe established by the department or its contracted vendors ~~provide for a regular independent auditing of its financial activities~~. The results of the financial audit must ~~Such financial~~


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~~information shall~~ be provided to the community alliance established under s. 20.19(5).

(j)1. May subcontract for the provision of services, excluding with a related party for officer or director level staffing to perform management functions, required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. Any contract with a non-related entity for officer or director level staffing to perform management functions must adhere to the executive compensation provision in s. 409.922(3).

2. The lead agency shall directly provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need~~,~~ within the lead agency's geographic service area~~,~~ where there is a lack of qualified providers available to perform necessary child welfare services. The approval period to exceed the threshold shall be limited to 2 years.~~to exceed this threshold~~. After the 2-year period, the lead agency may submit annual 1-year extension requests with a detailed report of all efforts to recruit a qualified provider to perform the necessary services to that geographic service area. If the department determines the lead agency is not making a good faith effort to recruit a qualified provider they must deny the extension request and require reprocurement. The local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether



the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and recommendation shall be made by representatives of local stakeholders, including at least one representative from each of the following:

1. The department.

2. The county government.

3. The school district.

4. The county United Way.

5. The county sheriff's office.

6. The circuit court corresponding to the county.

7. The county children's board, if one exists.

(k) Shall publish on its website by the 15th day of each month at a minimum the data specified in subparagraphs 1.-10.~~5.~~, calculated using a standard methodology determined by the department, for the preceding calendar month regarding its case management services. The following information shall be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The total number and percentage of case managers who have 25 or more cases on their caseloads;

3. The turnover rate for case managers and case management supervisors for the previous 12 months;


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4. The percentage of required home visits completed; and

5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months.

6. The number of unlicensed placements for the previous month;

7. The percentages and trends for foster parent and group home recruitment and licensure for the previous month;

8. The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and

9. The percentage of cases that converted from nonjudicial to judicial for the previous month.

10. Children's legal service staffing rates.

Section 4. Section 409.991, Florida Statutes, is repealed.

Section 5. Section 409.9913, Florida Statutes, is created to read:

409.9913 Funding methodology to allocate funding to lead agencies.—

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

(a) "Core services funding" means all funds allocated to lead agencies. The term does not include any of the following:

1. Funds appropriated for independent living services.

2. Funds appropriated for maintenance adoption subsidies.

3. Funds allocated by the department for child protective investigation service training.

4. Nonrecurring funds.

5. Designated mental health wrap-around service funds.

6. Funds for special projects for a designated lead agency.

7. Funds appropriated for the Guardianship Assistance



Program established under s. 39.6225.

(b) "Operational and fixed costs" means:

1. Administrative expenditures, including, but not limited to, information technology and human resources functions.

2. Lease payments.

3. Asset depreciation.

4. Utilities.

5. Administrative components of case management.

6. Mandated activities such as training, quality improvement, or contract management.

(2) The department shall develop, in collaboration with lead agencies and providers of child welfare services, a funding methodology for allocating core services funding to lead agencies which, at a minimum:

(a) Is actuarially sound.

(b) Is reimbursement based.

(c) Is designed to incentivize efficient and effective lead agency operation, prevention, family preservation, and permanency.

(d) Considers variable costs, including, but not limited to:

1. Direct costs for in-home and out-of-home care for children served by the lead agencies.

2. Direct costs for prevention services.

3. Operational and fixed costs.

(f) Is scaled regionally for cost-of-living factors.

(3) The lead agencies and providers shall submit any detailed cost and expenditure data that the department requests for the development of the funding methodology.


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(4) The department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2024, which, at a minimum:

(a) Describes a proposed funding methodology and formula that will provide for the annual budget of each lead agency, including, but not limited to, how the proposed methodology will meet the criteria in subsection (2).

(b) Describes the data used to develop the methodology, and the data that will be used to annually calculate the proposed lead agency budget.

(c) Specifies proposed rates and total allocations for each lead agency. The allocations must ensure that the total of all amounts allocated to lead agencies under the funding methodology does not exceed the total amount appropriated to lead agencies in the General Appropriations Act in the 2024-2025 fiscal year.

(d) Provides risk mitigation recommendations that ensure that lead agencies do not experience a reduction in funding that would be detrimental to operations or result in a reduction in services to children.

(5) By October 31 of each year, beginning in 2025, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes recommendations for adjustments to the funding methodology for the next fiscal year, using the criteria in subsection (2) and basing the recommendations on, at a minimum, updated expenditure data, cost-of-living adjustments, market dynamics, or other catchment area variations. The total of all amounts proposed for allocation to lead agencies under the funding methodology for the next fiscal year may not exceed the


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total amount appropriated for core services funding in the current fiscal year's General Appropriations Act. The funding methodology must include risk mitigation strategies that ensure that lead agencies do not experience a reduction in funding that would be detrimental to operations or result in a reduction in services to children.

(6)(a) The requirements of this section do not replace, and must be in addition to, any requirements of chapter 216, including, but not limited to, submission of final legislative budget requests by the department under s. 216.023.

(b) The data and reports required under subsections (4) and (5) may also include proposed rates and total allocations for each lead agency which reflect any additional core services funding for lead agencies which is requested by the department under s. 216.023.

(7)(a) Beginning with the 2025-2026 fiscal year, the Legislature shall allocate funding to lead agencies through the General Appropriations Act with due consideration of the funding methodology developed under this section.

(b) The department may not change the allocation of funds to a lead agency as provided in the General Appropriations Act without legislative approval. The department may approve additional risk pool funding for a lead agency as provided under s. 409.990.

(8) The department shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives monthly reports from July through October 2024 which provide updates on activities and progress in developing the funding methodology.



Section 6. Subsections (1) and (3) of section 409.992, Florida Statutes, are amended to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies is ~~shall be~~ governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(a)1. Lead agencies shall competitively procure all contracts, consistent with the federal simplified acquisition threshold.

2. Lead agencies shall competitively procure all contracts in excess of $35,000 with related parties.

3. Financial penalties or sanctions, as established by the department and incorporated into the contract, shall be imposed by the department for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services.

(b) The contract between the department and the lead agency must delineate the rights and obligations of the lead agency concerning the acquisition, transfer, or other disposition of real property. At a minimum, the contract must:

1. Require the lead agency to follow all federal law on the acquisition, improvement, transfer, or disposition of real property acquired by the lead agency using federal dollars.

2. Require the department to obtain the rights to and ownership of all real property acquired by the lead agency using state funds.

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3. Require the department to approve any sale, transfer, or disposition of real property acquired and held by the lead agency using state funds.

4. Require the department to retain all rights to and ownership of all real property acquired with state funds and held by the lead agency upon termination of the lead agency contract.

(3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This limitation applies regardless of the number of contracts a community-based care lead agency may execute with the department. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

Section 7. Paragraph (d) of subsection (1) of section 409.994, Florida Statutes, is amended to read:

409.994 Community-based care lead agencies; receivership.—

(1) The Department of Children and Families may petition a court of competent jurisdiction for the appointment of a receiver for a community-based care lead agency established pursuant to s. 409.987 if any of the following conditions exist:

(d) The lead agency cannot meet, or is unlikely to meet, its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of


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delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities constitutes ~~shall constitute~~ prima facie evidence that the lead agency lacks the financial ability to meet its financial obligations.

Section 8. Paragraph (d) of subsection (1) of section 409.996, Florida Statutes, is amended to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:

(d) Provide for contractual actions ~~tiered interventions and graduated penalties~~ for failure to comply with contract terms or in the event of performance deficiencies, as determined appropriate by the department.

1. Such contractual actions must ~~interventions and penalties shall~~ include, but are not limited to:

a.~~1.~~ Enhanced monitoring and reporting.

b.~~2.~~ Corrective action plans.

c.~~3.~~ Requirements to accept technical assistance and

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consultation from the department under subsection (6).

d.~~4.~~ Financial penalties, which shall require a lead agency to direct~~reallocate~~ funds from administrative costs to the department. The department shall use collected funds to support and provide services to children and families in the geographic service area of the lead agency from which the funds were obtained~~direct care for children~~.

e.~~5.~~ Early termination of contracts, as provided in s. 402.7305(3)(f) ~~s. 402.1705(3)(f)~~.

2. No later than January 1, 2025, the department shall ensure that each lead agency contract executed includes a list of financial penalties for failure to comply with contractual requirements.

Section 9. The Department of Children and Families shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on rules and policies adopted and other actions taken to implement the requirements of this act. The first such report must be due September 30, 2024, and the second such report must be due February 1, 2025.

Section 10. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to community-based child welfare agencies; amending s. 409.016, F.S.; defining the term "management functions"; amending s. 409.987, F.S.;



revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; revising requirements for an entity to serve as a lead agency; providing duties for board members of lead agencies; requiring that lead agencies ensure that board members participate in certain annual training; requiring the posting of a fidelity bond; revising the definition of the term "conflict of interest"; defining the term "related party"; requiring the lead agency's board of directors to disclose any known or potential conflicts of interest; prohibiting a lead agency from entering into a contract or being a party to any transaction with related parties if a conflict of interest is not properly disclosed; prohibiting a lead agency from entering into a contract or being a party to any transaction with related parties for officer or director level staffing to perform management functions; authorizing a lead agency to enter into certain contracts or be a party to certain transactions so long as any conflict of interest is properly disclosed; requiring contractual penalties on lead agencies for undisclosed conflicts of interest; providing applicability; requiring certain contracts to be reprocured; authorizing the department to recoup lead agency expenses for the execution of certain contracts; amending s. 409.988, F.S.; revising lead agency duties; repealing s. 409.991, F.S., relating to allocation of funds for community-based care lead



agencies; creating s. 409.9913, F.S.; providing definitions; requiring the department, in collaboration with the lead agencies and providers of child welfare services, to develop a specific funding methodology for the allocation of core services that meets certain criteria; requiring the lead agencies and providers of child welfare services to submit to the department certain financial information; requiring the department to submit to the Governor and the Legislature certain reports by the established deadlines; subjecting the allocation of core services to the requirements of ch. 216, F.S.; authorizing the department to include certain rates and total allocations in certain reports; requiring the Legislature to allocate funding to the lead agencies with due consideration of the funding methodology, beginning with the 2025-2026 fiscal year; prohibiting the department from changing a lead agency's allocation of funds provided in the General Appropriations Act without legislative approval; authorizing the department to approve certain risk pool funding for a lead agency; requiring the department to submit to the Governor and the Legislature certain reports by the established deadlines; amending s. 409.992, F.S.; revising requirements for lead agency practices in the procurement of commodities and contractual services; requiring the department to impose certain penalties for a lead agency's noncompliance with applicable


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procurement law; requiring the contract between the department and the lead agency to specify the rights and obligations to real property held by the lead agency during the term of the contract; providing applicability of certain limitations on the salaries of community-based care lead agency administrative employees; amending s. 409.994, F.S.; revising the conditions under which the department may petition a court for the appointment of a receiver for a community-based care lead agency; amending s. 409.996, F.S.; revising requirements for contracts between the department and lead agencies; revising the actions the department may take under certain circumstances; making a technical change; providing duties of the department; providing reporting requirements; providing an effective date.

By the Appropriations Committee on Health and Human Services; the Committee on Children, Families, and Elder Affairs; and Senator Garcia

603-03303-24 2024536c2

A bill to be entitled

An act relating to community-based child welfare agencies; amending s. 409.987, F.S.; revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; revising requirements for an entity to serve as a lead agency; requiring lead agencies to ensure that board members participate in certain annual training; revising the definition of the term "conflict of interest"; defining the term "related party"; requiring the lead agency's board of directors to disclose any known, actual, or potential conflicts of interest; prohibiting a lead agency from entering into a contract or being a party to a transaction that creates a conflict of interest; requiring a lead agency to competitively procure certain contracts; imposing civil penalties on lead agencies for undisclosed conflicts of interest; providing applicability; requiring that contracts for which a conflict of interest was not disclosed be reprocured; authorizing the department to prohibit execution of certain contracts; amending s. 409.988, F.S.; revising community-based care lead agencies duties to include compliance with regular, independent auditing; requiring that contracts valued at more than a specified amount comply with the competitive procurement process; prohibiting lead agencies from subcontracting for management and oversight functions required by its contract; limiting the approval period

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

603-03303-24 2024536c2

for which the lead agency may provide more than 35 percent of child welfare services to 2 years; requiring the lead agency to submit quarterly reports to the department and community alliance showing specified efforts; requiring the lead agency to reprocure such services at the end of a specified period; providing that, in a certain circumstance, review and approval or denial of a lead agency's request for an exemption from the services threshold is within the sole purview of the department; revising the information that lead agencies must publish on their website; amending s. 409.992, F.S.; revising requirements for lead agency practices in the procurement of commodities and contractual services; requiring the department to impose certain penalties for a lead agency's noncompliance with applicable procurement law; requiring lead agencies to comply with established purchasing practices for the procurement of real property and professional services; requiring the department to retain all rights to and ownership of real property procured upon termination of contracts; requiring that certain funds be returned to the department; providing applicability of certain limitations on the salaries of community-based care lead agency administrative employees; amending s. 409.994, F.S.; revising the conditions under which the department may petition a court for the appointment of a receiver for a community-based care lead agency; amending s. 409.996, F.S.; revising

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

requirements for contracts between the department and lead agencies; revising the actions the department may take in certain circumstances; making a technical change; providing duties of the department; providing an effective date.

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

Section 1. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 409.987, Florida Statutes, are amended, and paragraph (g) is added to subsection (7) of that section, to read:

409.987 Lead agency procurement; boards; conflicts of interest.—

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies. The 5-year contract must be reprocured at the end of each 5-year contract term. The contract may be extended at the discretion of the department for up to 1 year, based on department needs.

(4) In order to serve as a lead agency, an entity must:

(a) Be organized as a Florida corporation or a governmental entity.

(b) Be governed by a board of directors or a board committee composed of board members. Board members shall provide oversight and ensure accountability and transparency for the system of care. The board of directors shall provide fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse. The lead agency shall ensure that board

members participate in annual training, as approved by the department, related to their responsibilities. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

1. At least 75 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must be composed ~~consist~~ of persons residing within the service area of the lead agency.

2. The powers of the board of directors or board committee include, but are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.

(c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a

performance bond.

(7)(a) As used in this subsection, the term:

1. "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with a lead agency for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.

2. "Conflict of interest" means when a board member, a director, or an officer, or a relative of a board member, a director, or an officer, of a lead agency does any of the following:

a. Enters into a contract or other transaction for goods or services with the lead agency.

b. Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the lead agency or proposes to enter into a contract or other transaction with the lead agency. For purposes of this paragraph, the term "indirect interest" has the same meaning as in s. 112.312.

c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member, director, or officer, or relative of the board member, director, or officer, with the lead agency. For purposes of this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members or officers of the lead agency in connection with their service on the board.

3. "Related party" means any entity of which a director or an executive of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity.

4.~~3.~~ "Relative" means a relative within the third degree of consanguinity by blood or marriage.

(b)1. For any activity that is presented to the board of a lead agency for its initial consideration and approval ~~after July 1, 2021~~, or any activity that involves a contract that is being considered for renewal ~~on or after July 1, 2021, but before January 1, 2022~~, a board member, a director, or an officer of a lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or a contract is renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted on by the board without prior notice as required under paragraph (c). The board shall disclose any known, actual, or potential conflicts to the department.

2. A lead agency may not enter into a contract or be a party to any transaction that creates a conflict of interest, including with related parties for the provision of management or administrative services or oversight. The lead agency shall

competitively procure all contracts with related parties in excess of $35,000 ~~For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer of the lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021~~.

(g)1. Civil penalties in the amount of $5,000 per occurrence shall be imposed for each known and potential conflict of interest, as described in paragraph (b), which is not disclosed to the department. Civil penalties must be paid by the board and not from any state or federal funds.

2. If a contract is executed for which a conflict of interest was not disclosed to the department before execution of the contract, the following penalties apply:

a. A civil penalty in the amount of $50,000 for the first offense.

b. A civil penalty in the amount of $100,000 for a second or subsequent offense.

3. The civil penalties for failure to disclose a conflict of interest under subparagraphs 1. and 2. apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, single-source contracts, and contracts that do not meet the minimum threshold for formal procurement.

4. A contract procured for which a conflict of interest was not disclosed to the department before execution of the contract must be reprocured.

5. The department may, at its sole discretion, prohibit

execution of a contract for which a conflict of interest exists, or will exist after execution.

Section 2. Paragraphs (c), (i), (j), and (k) of subsection (1) of section 409.988, Florida Statutes, are amended to read:

409.988 Community-based care lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(c) Shall follow the financial guidelines developed by the department and shall comply with regular, independent auditing of its financial activities, including any requests for records associated with such financial audits within the timeframe established by the department or its contracted vendors ~~provide for a regular independent auditing of its financial activities~~. The results of the financial audit must ~~Such financial information shall~~ be provided to the community alliance established under s. 20.19(5).

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services. Any subcontract in excess of $250,000 must comply with the competitive procurement process.

(j) May subcontract for the provision of services, excluding management and oversight functions, required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The contract with the department must detail the administrative functions and services the lead agency is allowed to subcontract. The lead agency shall directly

provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need~~,~~ within the lead agency's geographic service area where there is a lack of viable providers available to perform the necessary services. The approval period to exceed the threshold is limited to 2 years. During this 2-year period, the lead agency must submit quarterly reports to the department and the community alliance showing its efforts to recruit providers to the geographic service area. The lead agency must reprocure these services before the end of the 2-year period~~, to exceed this threshold~~. The local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and approval or denial of the lead agency's request for an exemption from the services threshold must ~~recommendation shall~~ be made by the department. ~~by representatives of local stakeholders, including at least one representative from each of the following:~~

~~1. The department.~~

~~2. The county government.~~

~~3. The school district.~~

~~4. The county United Way.~~

~~5. The county sheriff's office.~~

~~6. The circuit court corresponding to the county.~~

~~7. The county children's board, if one exists.~~

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

(k) Shall publish on its website by the 15th day of each month at a minimum the data specified in subparagraphs 1.-9. ~~1.-5.~~, calculated using a standard methodology determined by the department, for the preceding calendar month regarding its case management services. The following information must ~~shall~~ be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The total number and percentage of case managers who have 25 or more cases on their caseloads;

3. The turnover rate for case managers and case management supervisors for the previous 12 months;

4. The percentage of required home visits completed; ~~and~~

5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months; ~~.~~

6. The number of unlicensed placements for the previous month;

7. The percentage and trends for foster parent and group home recruitment and licensure for the previous month;

8. The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and

9. The percentage of cases that converted from nonjudicial to judicial for the previous month.

Section 3. Subsections (1) and (3) of section 409.992, Florida Statutes, are amended to read:

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

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies is ~~shall be~~ governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(a) Lead agencies shall competitively procure all contracts, consistent with the simplified acquisition threshold as specified in 2 C.F.R. part 200. Financial penalties or sanctions, as established by the department and incorporated into the contract, shall be imposed by the department for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services.

(b) Notwithstanding s. 402.73, for procurement of real property or professional services, lead agencies shall comply with established purchasing practices, including the provisions of s. 287.055, as required, for professional services, including engineering or construction design. Upon termination of the contract, the department shall immediately retain all rights to and ownership of real property procured. Any funds from the sale, transfer, or other dispossession of such property during the contract term shall be returned to the department.

(3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments from the lead agency or any related party, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from state-

appropriated funds, including state-appropriated federal funds. This limitation applies regardless of the number of contracts a community-based care lead agency may execute with the department. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

Section 4. Paragraphs (c) and (d) of subsection (1) of section 409.994, Florida Statutes, are amended to read:

409.994 Community-based care lead agencies; receivership.—

(1) The Department of Children and Families may petition a court of competent jurisdiction for the appointment of a receiver for a community-based care lead agency established pursuant to s. 409.987 if any of the following conditions exist:

(c) The department determines that conditions exist in the lead agency which present a ~~an imminent~~ danger to the health, safety, or welfare of the dependent children under that agency's care or supervision. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.

(d) The lead agency cannot meet, or is unlikely to meet, its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities constitutes ~~shall constitute~~ prima facie evidence that the lead agency lacks the financial ability to meet its financial obligations.

Section 5. Paragraph (d) of subsection (1) of section 409.996, Florida Statutes, is amended to read:

409.996 Duties of the Department of Children and Families.—

The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:

(d) Provide for contractual actions ~~tiered interventions and graduated penalties~~ for failure to comply with contract terms or in the event of performance deficiencies, as determined appropriate by the department.

1. Such contractual actions must ~~interventions and penalties shall~~ include, but are not limited to:

~~1. Enhanced monitoring and reporting.~~

a.~~2.~~ Corrective action plans.

b.~~3.~~ Requirements to accept technical assistance and consultation from the department under subsection (6).

c.~~4.~~ Financial penalties, which ~~shall~~ require a lead agency to direct ~~reallocate~~ funds from administrative costs to the department. The department shall use the funds collected to support service delivery of quality improvement activities for children in the lead agency's care ~~to direct care for children~~. These penalties may be imposed for failure to provide timely,

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sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the department. Financial penalties may include liquidated damages.

d.~~5.~~ Early termination of contracts, as provided in s. 402.7305(3)(f) ~~s. 402.1705(3)(f)~~.

2. The department shall include in each lead agency contract executed a provision that requires payment to the department of sanctions or disincentives for failure to comply with contractual obligations. The department shall establish a schedule of daily monetary sanctions or disincentives for lead agencies, which must be incorporated by reference into the contract. The department is solely responsible for determining the monetary value of liquidated damages.

Section 6. This act shall take effect July 1, 2024.

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The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 536
Bill Number or Topic

Amendment Barcode (if applicable)

Name Sam Kerce

Phone 850-488-9410

Address 2415 N. Monroe St
Street

Email sam.kerce@myFLFamilies.com

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
DCF

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

536
Bill Number or Topic

Amendment Barcode (if applicable)

Name Leslie Veiga

Phone 786-282-6860

Address 401 NW 2nd Ave
Street

Email leslievc@citrushealth.com

Miami FL 33128
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Citrus Health Ntwk

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

536
Bill Number or Topic

736738
Amendment Barcode (if applicable)

Name Leslie Veiga

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Address 401 NW 2nd Ave
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Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Citros Health Network

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

536
Bill Number or Topic

No Amendment does not exist
Amendment Barcode (if applicable)

Name Leslie Veiga

Phone 786-282-6860

Address 401 NW 2nd Ave
Street
Miami FL 33128
City State Zip

Email leslievc@citroushealth.com

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 564
INTRODUCER:	Fiscal Policy Committee; Children, Families, and Elder Affairs Committee and Senator Garcia and others
SUBJECT:	Young Adult Aftercare Services
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Fav/CS**
2.	Sneed	McKnight	AHS	**Favorable**
3.	Rao	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Substantial Changes

I. Summary:

CS/CS/SB 564 expands the eligibility for receiving Aftercare services subject to available funding. If a young adult between the ages of 18 and 22 receives Postsecondary Education Services and Support (PESS), requires temporary financial assistance for emergency situations, and was placed in out-of-home care for at least six months after turning 14 years of age and did not achieve reunification with his or her parent or guardian, they may be eligible for receiving Aftercare services upon available funding. This will allow more young adults to access needed services.

The bill permits the Department of Children and Families (DCF) to distribute federal funds to all young adults deemed eligible by the funding source in the event of a state or national emergency even if the young adult does not meet eligibility requirements for PESS or Aftercare.

The bill is expected to have a significant negative fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates Florida's dependency system charged with protecting children who have been abused, neglected, or abandoned. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) and community-based care lead agencies (CBCs) work with those families to address the problems endangering children, if possible. If those identified problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.[1]

When children are placed in out-of-home care, the DCF and CBCs must find safe, permanent homes for them as quickly as possible. In most cases, children are reunified with their families upon the parents' completion of a specific case plan. When reunification is not possible, the DCF will seek to place a child in a permanent home with relatives or an adoptive home. The DCF strives to achieve permanency for all children in care before their 18th birthday.[2] However, a child will age out of care at the age of 18 if a permanent placement is not found.[3]

Young adults who age out of foster care have challenges achieving self-sufficiency. Compared to young adults without foster care involvement, these young adults are less likely to earn a high school diploma or GED, or attend college.[4] They are more likely to suffer from mental health problems, have a higher rate of criminal justice system involvement, have difficulty achieving financial independence, need public assistance, and experience housing instability or homelessness.[5]

From October 1, 2022, to September 30, 2023, a total of 801 young adults aged out of Florida's foster care system.[6]

Federal - The Chafee Foster Care Independence Program

States can receive federal reimbursement to assist in providing services to young adults after aging out of care. The Chafee Foster Care Independence Program (Chafee) is a capped entitlement for which states are entitled reimbursement for claims it submits to the federal government, up to a certain level, related to preparing young adults for self-sufficiency. With federal reimbursement provided by Chafee, a state can provide independent living services and

[1] Chapter 39, F.S.
[2] Section 39.01, F.S. Section 39.621, F.S., lists the permanency goals in order of preference as 1. reunification; 2. adoption, if a petition for termination of parental rights has been or will be filed; 3. permanent guardianship; 4. permanent placement with a fit and willing relative; or 5. placement in another planned permanent living arrangement.
[3] Rule 65C-30.022, F.A.C.
[4] Gypen, L., Vanderfaeillie, J., et al., *"Outcomes of Children Who Grew Up in Foster Care: Systematic-Review"*, Children and Youth Services Review, vol. 76, pp. 74-83, available at http://dx.doi.org/10.1016/j.childyouth.2017.02.035 (last visited December 11, 2023).
[5] *Id.*
[6] Florida Department of Children and Families, *Office of Child and Family Well-Being Dashboard*, available at: https://www.myflfamilies.com/ocfw-dashboard (last visited Jan. 4, 2024).

support to young adults, such as education, employment, financial management, housing, emotional support, and connections to caring adults.[7]

Federal eligibility for Chafee programs includes:
- Youth in foster care, ages 14 and older.
- Young people in or formerly in foster care, ages 18 to 21, or 23 in some jurisdictions.
- Youth who left foster care through adoption or guardianship at age 16 or older.
- Youth "likely to age out of foster care" to receive assistance to participate in age appropriate and normative activities.

In 2022, Florida was allotted $7,175,951 in federal dollars through Chafee to help fund its independent living services.[8]

Florida's Independent Living Services

Florida provides independent living services to young adults to help them transition out of foster care and to prepare them to become self-sufficient adults. Florida's independent living services include EFC, which applies to young adults who were in licensed foster care upon turning 18 years of age.[9] Florida also offers two other independent living programs: PESS and Aftercare. The following table provides information on the eligibility requirements to participate in Florida's independent living programs and the services provided by each.

Program	Eligibility	Services
Extended Foster Care (EFC)[10]	Young adults who turned 18 in foster care and are: • Completing high school or its equivalent; ***or*** • Enrolled in college or vocational schooling; ***or*** • Working at least 80 hours per month. To stay in EFC, the young adult must: • Meet with a case manager every month. • Continue to participate in a required activity. • Attend court reviews every six months.	Young adults may choose to remain in licensed foster care and receive foster care services until the age of 21 (22 with a disability).
Postsecondary Education Services and Support (PESS)[11]	1. Young adults who turned 18 in foster care and spent at least 6 months in licensed out-of-home care before turning 18. 2. Young adults who are at least 18 and were adopted from foster care after age 16 or were placed with a court-approved guardian after spending at least 6 months in licensed foster	$1,720 per month for: • Housing • Utilities • Living expenses Available until the age 23.

[7] U.S. Department of Health & Human Services Children's Bureau, *John H. Chafee Foster Care Program for Successful Transition to Adulthood,* available at: https://www.acf.hhs.gov/cb/grant-funding/john-h-chafee-foster-care-independence-program (last visited Dec. 11 2023).
[8] Administration for Children and Families U.S. Department of Health and Human Services, *FY 2022 Allotment for Chafee Foster Care Program for Successful Transition to Adulthood Grants,* available at: https://www.acf.hhs.gov/cb/policy-guidance/pi-23-01 (last visited Jan. 6, 2024).
[9] Ch. 2013-178, Laws of Florida
[10] Section 39.6251, F.S.
[11] Section 409.1451(2), F.S.

Program	Eligibility	Services
	care within the 12 months immediately preceding such adoption or placement; ***and*** • Have earned a high school diploma or its equivalent; ***and*** • Are attending a college or vocational school that is Florida Bright Futures eligible.	
Aftercare [12]	Young adults who turned 18 while in licensed foster care, but are not yet 23, and • Are not in EFC; ***or*** • Are not in PESS.	Mentoring Tutoring Substance abuse treatment Counseling Job and career skills training Temporary financial assistance for necessities

To prepare an older youth for the possibility of aging out of care, current law requires the DCF and the CBCs to develop a transition plan with the youth during the year after he or she reaches 16 years of age, with the requirement to update the plan before the youth reaches 18 years of age.[13] The transition plan must provide information on independent living services that are tailored to the individual needs and plans of the youth, the advantages and disadvantages of participation in each program, and the financial value of each program.[14]

The following table shows the total number of young adults receiving independent living services by program type for the last two state fiscal years (SFY).[15]

SFY	Aftercare	EFC	PESS
2020-21	366	1498	832
2021-22	433	1418	864

Aftercare Services (Aftercare)

Section 409.1451(3), F.S., allows a young adult to receive Aftercare if he or she turned 18 years of age while in licensed foster care, but has not yet turned 23 years of age, and:
- Is not in EFC; or
- Is not receiving PESS.

The Aftercare provided to a young adult is based on a needs assessment and is intended to be temporary.[16] The services are often used as a bridge to EFC and PESS and may include mentoring, tutoring, mental health, substance abuse, counseling, and financial assistance.[17]

[12] Section 409.1451(3), F.S.
[13] Section 39.6035, F.S.
[14] *Id.*
[15] Florida Department of Children and Families, *Independent Living Services Annual Report February 2023*, available at: https://www.myflfamilies.com/sites/default/files/2023-07/Independent_Living_Services_Report_2022.pdf (last visited Jan. 5, 2024).
[16] *Id.*
[17] *Id.*

Aftercare is currently used as a safety net for a young adult who does not meet eligibility criteria for more long-term independent living programs.[18]

However, current eligibility requirements for Aftercare limits similarly situated young adults from accessing needed services by:

- Allowing only young adults who were in licensed foster care at the age of 18 to be eligible for services. Young adults who were placed by the court with a relative, nonrelative, or another responsible adult are not considered to be in licensed foster care and therefore, are not eligible for Aftercare even if permanency was not achieved by the age of 18.
- Making young adults ineligible for Aftercare if they are in EFC. A young adult in licensed foster care on his or her 18th birthday can choose to remain in licensed care until the age of 21 (or age 22 if they have a disability).[19] While in EFC, the young adult lives independently but is provided supervision, case management, and supportive services.[20] While Aftercare and EFC offer some overlapping services, young adults in EFC are not eligible to receive certain financial benefits that only Aftercare provides, such as financial assistance for an emergency.[21]
- Making young adults ineligible for Aftercare if they are receiving PESS. A young adult who currently receives PESS is only eligible for temporary financial assistance under Aftercare to address emergency situations, including, but not limited to, automobile repairs or large medical expenses.[22] However, other Aftercare services, such as tutoring, mentoring, or financial literacy training, could be beneficial for young adults receiving PESS even if there is not an emergency.

III. Effect of Proposed Changes:

Section 1 amends s. 409.1451(3), F.S., to expand the number of young adults who may be able to receive Aftercare services subject to available funding. The bill makes Aftercare available to a young adult between the ages of 18 and 22 who is:

- Receiving Postsecondary Education Supports and Services (PESS) and is experiencing an emergency situation, requires temporary financial assistance for emergency situations but lacks the resources to meet the situation.
- Was placed and lived in out-of-home care for at least 6 months after turning 14 years of age, pursuant to a court order under s. 39.811, F.S. but did not achieve reunification with his or her parent or guardian.

The bill expands the eligibility of young adults to receive funding during emergency situations. The bill expands this eligibility to permit the Department of Children and Families to distribute federal funds to all young adults deemed eligible by the funding source in the event of a state or national emergency, notwithstanding the eligibility criteria established.

Section 2 provides an effective date of July 1, 2024.

[18] *Id.*
[19] Section 39.6251, F.S.
[20] *Id.*
[21] R 65C-41, F.A.C.; R. 65C-42.003, F.A.C.
[22] Section 409.1451(3)(a)2., F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families (DCF) submitted a Legislative Budget Issue for Fiscal Year 2024-2025 requesting additional budget authority to expand eligibility for several Independent Living programs, including Aftercare Services. In the budget issue (4002470), the DCF projected that changing the eligibility could result in an additional 1,835 young adults becoming eligible for Aftercare Services in Fiscal year 2024-2025.[23] The DCF applied a 15 percent participation rate to determine a projected increase of 275 youth that may participate in Aftercare Services in Fiscal Year 2024-2025. The DCF used an average monthly financial assistance provided for Aftercare Services of $1,039,[24] resulting in a total monthly need of $285,725, or $3,428,700 annually for SB 564.

[23] DCF noted the Florida Safe Families Network (FSFN) as the data source for Aftercare Services based on March 2023 payments for services provided 3/1/2023 - 3/31/2023 and number of children who have been adopted or placed in permanent guardianship at ages 14, 15, 16, or 17, who are now ages 18 - 22, through June 28, 2023.
[24] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.1451 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 Fiscal Policy on February 27, 2024:
The committee substitute restructures the bill language to keep current law aftercare eligibility requirements, but expands eligibility, subject to available funding, to those who were in out-of-home care for at least 6 months after 14 years of age, and did not achieve reunification with his or her parent or guardian.

CS by Children, Families, and Elder Affairs on January 10, 2024:
The committee substitute clarifies that Aftercare services are available to any child placed by a court order pursuant to Chapter 39, F.S., rather than a specific type of placement.

B. Amendments:

None.

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

645594

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Garcia) recommended the following:

Senate Amendment

Delete lines 18 - 35
and insert:
(a)1. Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age and is:
a. Not in foster care.
b. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.

645594

2. Subject to available funding, aftercare services ~~as specified in subparagraph (b)8.~~ are also available to a young adult who is between the ages of 18 and 22, and is:

i. Receiving financial assistance under subsection (2), is experiencing an emergency situation, requires services as specified in subparagraph (b)8., and whose resources are insufficient to meet the emergency situation. Such assistance shall be in addition to any amount specified in paragraph (2)(b).

ii. Was placed by a court in out-of-home care pursuant to chapter 39, lived in out-of-home care for at least 6 months after turning 14 years of age, and did not achieve reunification with his or her parent or guardian.

By the Committee on Children, Families, and Elder Affairs; and Senator Garcia

586-02008-24 2024564c1

A bill to be entitled

An act relating to young adult aftercare services; amending s. 409.1451, F.S.; revising eligibility requirements for aftercare services for certain young adults; authorizing the Department of Children and Families to distribute federal funds to eligible young adults in certain circumstances; providing an effective date.

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

Section 1. Present subsection (11) of section 409.1451, Florida Statutes, is redesignated as subsection (12), a new subsection (11) is added to that section, and paragraph (a) of subsection (3) of that section is amended, to read:

409.1451 The Road-to-Independence Program.—

(3) AFTERCARE SERVICES.—

(a) ~~1.~~ Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age and, who, having been placed by a court pursuant to chapter 39, has lived in out-of-home care for at least 6 months after turning 14 years of age. Young adults who receive support under subsection (2) or s. 39.6251 are only eligible for aftercare services and support services that are not already provided by those programs ~~is:~~

~~a. Not in foster care.~~

~~b. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.~~

~~2. Subject to available funding, aftercare services as specified in subparagraph (b)8. are also available to a young adult who is between the ages of 18 and 22, is receiving financial assistance under subsection (2), is experiencing an emergency situation, and whose resources are insufficient to meet the emergency situation. Such assistance shall be in addition to any amount specified in paragraph (2)(b).~~

(11) FUNDING DURING EMERGENCY.—Notwithstanding the eligibility criteria in subsections (2) and (3), the department may distribute federal funds to all young adults deemed eligible by the funding source in the event of a state or national emergency.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

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02/27/24
Meeting Date

Senate Fiscal Policy
Committee

SB 564
Bill Number or Topic

Amendment Barcode (if applicable)

Name Alexia Nechayev

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City State Zip

Reset Form

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB564
Bill Number or Topic

Amendment Barcode (if applicable)

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Miami FL 33132
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 564
Bill Number or Topic

Amendment Barcode (if applicable)

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Orlando FL 32809
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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Florida PTA

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 564
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Sheetz

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Email

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	SB 590
INTRODUCER:	Senators Burgess and Perry
SUBJECT:	Music-based Supplemental Content to Accelerate Learner Engagement and Success Pilot Program
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	**Favorable**
2.	Gray	Elwell	AED	**Favorable**
3.	Brick	Yeatman	FP	**Favorable**

I. Summary:

SB 590 establishes the two-year Music-based Supplemental Content to Accelerate Learner Engagement and Success (mSCALES) Pilot Program within the Department of Education (DOE). The program is intended to assist districts in adopting music-based supplemental materials that support STEM courses for middle school students.

School districts in Alachua, Marion, and Miami-Dade counties will receive $6 per student if they are approved by the DOE and utilize the adopted music-based supplemental materials at least twice per week to supplement mathematics instruction by teachers who are certified to teach mathematics.

The bill requires the College of Education at the University of Florida to continuously evaluate the program's effectiveness and annually share the findings of its evaluations with the DOE and the Legislature. The University of Florida will submit a final report by October 1, 2026, to the DOE, the Legislature, and the Florida Center for Partnerships for Arts-Integrated Teaching.

The pilot program expires June 30, 2026.

This fiscal on this bill is subject to legislative appropriation. See section V.

The bill takes effect July 1, 2024.

II. Present Situation:

Some studies have indicated a positive correlation between instruction in music and math.[1] Additionally, a variety of aspects of cognitive development have been shown to be positively linked with music instruction in school, including spatial-temporal abilities, selective attention, and memory for verbal stimuli.[2] Some research has even identified a positive association between music education and increases in student self-esteem, academic success, and discipline.[3]

Early Childhood Music Education Incentive Program

The Legislature established the Early Childhood Music Education Incentive Pilot Program in 2017 to assist certain school districts in implementing comprehensive music education programs in kindergarten through grade 2, beginning with the 2017-2018 school year.[4] In 2023, the Early Childhood Music Education Incentive Pilot Program was converted into a permanent program administered by the DOE.[5]

For a school district to be eligible for participation in the program, the district school superintendent must certify to the DOE that specified elementary schools within the district have established a comprehensive music education program that:

- Includes all students enrolled at the school in kindergarten through second grade;
- Is staffed by certified music educators;
- Provides music instruction for at least 30 consecutive minutes two days a week;
- Complies with class size requirements under the law; and
- Complies with the DOE's standards for early childhood music education programs for students in kindergarten through second grade.

The DOE is required to approve school districts to participate in the program, subject to legislative appropriation, according to needs-based criteria established by the State Board of Education (SBE). Selected school districts must annually receive $150 per full-time equivalent student in kindergarten through second grade who is enrolled in a comprehensive music education program.

The SBE is authorized to adopt rules to administer the program.[6]

---

[1] J.D. Walsh and B.K. Coleman, *Using Music to Teach Math in Middle School*, 2 South Carolina Association for Middle Level Education Journal 144-151 (2023), *available at* https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1028&context=scamle; *see also M*.F. Gardiner, *et al*, *Learning Improved by Arts Training*, 381 NATURE 284 (1996) (last visited Jan. 9, 2024).

[2] *See, e.g.*, Lois Hetland, *Learning to Make Music Enhances Spatial Reasoning*, 34 J. Aesthetic Ed. 179 (2000); J. Goopy, *'Extra-musical effects' and Benefits of Programs Founded on the Kodaly Philosophy*, 2 AUSTRALIAN JOURNAL OF MUSIC EDUCATION 71-78 (2013); Yim-Chi Ho, *et al*, *Music Training Improves Verbal but Not Visual Memory: Cross-Sectional and Longitudinal Explorations in Children*, 17 NEUROPSYCHOLOGY 439 (2003).

[3] *See e.g.*, Cecil Adderley, *et al*, *"A home away from home": The world of the high school music classroom*, 51 J. MUSIC RES. 190 (2003).

[4] Chapter 2017-116, Laws of Fla.

[5] Chapter 2023-168, Laws of Fla.

[6] Section 1003.481, F.S.

The Legislature appropriated $400,000 in recurring funds and $10 million in nonrecurring funds for the DOE to implement the Early Childhood Music Education Program in the 2023-2024 fiscal year.[7] Based on applications received, the DOE anticipates that the program will serve 19,346 students in 78 schools across 13 school districts in the 2023-2024 fiscal year. The DOE projects expenditures of $3,205,248 for the 2023-2024 fiscal year.[8]

Middle Grades Mathematics Teachers

Specialization requirements for teacher certification as a middle grades mathematics instructor require a bachelor's or higher degree with a mathematics or middle grades mathematics major, or at least 18 semester hours in mathematics, including:

- Calculus, precalculus, or trigonometry;
- Geometry; and
- Probability or statistics.[9]

As of the 2021-2022 school year, there were 17,786 mathematics teacher certifications in Florida.[10] The maximum number of students assigned to each teacher who is teaching middle school mathematics may not exceed 22 students.[11]

The Florida Center for Partnerships in Arts-Integrated Teaching

The Florida Center for Partnerships in Arts-Integrated Teaching, commonly referred to as PAInT, is a state-wide resource in arts-integrated pedagogy. The Center for PAInT is an essential part of the collaborative strategic planning for the arts in Florida.[12] The goals of the center include research in arts-integrated teaching, technical assistance and support, professional development, and examination of arts integrated teaching in Science, Technology, Engineering, and Math (STEM) educational courses.[13]

III. Effect of Proposed Changes:

This bill creates s. 1003.482, F.S., to establish the two-year Music-based Supplemental Content to Accelerate Learner Engagement and Success (mSCALES) Pilot Program within the DOE. The program is intended to assist districts in adopting music-based supplemental materials that support STEM courses for middle school students.

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[7] Specific Appropriation 96, ch. 2023-239, s. 2, , Laws of Fla.
[8] Email, Florida Department of Education (January 2, 2024), with attachment (on file with the Senate Committee on Education Pre-K-12)..
[9] Rule 6A-4.0261, F.A.C.
[10] Florida Department of Education, *Identification of High Demand Teacher Needs for 2023-2024*, *available at* https://www.fldoe.org/core/fileparse.php/20562/urlt/16-2.pdf, at 4 (last visited Jan. 9, 2024).
[11] Section 1003.03(1), F.S.
[12] University of South Florida, Center for PAInT, *Mission, Belief Statement, and Definition of Arts Integration*, https://www.sarasotamanatee.usf.edu/academics/center-for-paint/#:~:text=The%20Florida%20Center%20for%20Partnerships,for%20the%20Arts%20in%20Florida (last visited Jan. 9, 2024).
[13] Section 1004.344, F.S.

The bill requires the adopted music-based supplemental materials to be used at least twice per week to supplement mathematics instruction by teachers who are certified to teach mathematics. Participating districts are required to annually certify to the DOE that they are complying with this requirement and also class size requirements. Participating school districts receive $6 per student. Eligible middle schools must be in the same attendance zone as an elementary school that participated in the Early Childhood Music Education Incentive Program.

The bill authorizes the school districts in Alachua, Marion, and Miami-Dade counties to participate in the pilot program. To participate, the school district superintendent must contact the DOE.

The bill authorizes the DOE to approve a school district to participate in the pilot program if sufficient funding is available as appropriated by the Legislature. The DOE is required to prescribe application forms and forms for districts to certify they are meeting the requirements of the pilot program.

The bill requires the College of Education at the University of Florida to continuously evaluate the program's effectiveness and annually share the findings of its evaluations with the DOE and the Legislature. The College of Education must also prepare a comprehensive final report of the program's overall effectiveness. The report must be presented, no later than October 1, 2026, to the DOE, the Legislature, and the Florida Center for Partnerships for Arts-Integrated Teaching.

The pilot program expires June 30, 2026.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The provision of the bill authorizing school districts to participate in the pilot program is subject to legislative appropriation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1003.482 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 Senator Burgess

23-00815-24 2024590__

A bill to be entitled

An act relating to the Music-based Supplemental Content to Accelerate Learner Engagement and Success Pilot Program; creating s. 1003.482, F.S.; creating the pilot program within the Department of Education; providing the purpose of the pilot program; providing requirements for the pilot program; providing eligibility; authorizing district school superintendents to contact the department for their district to participate in the pilot program; providing funding requirements, subject to legislative appropriation; requiring participating school districts to maintain eligibility; requiring the College of Education at the University of Florida to evaluate the pilot program's effectiveness and annually share its findings with the Department of Education and the Legislature; requiring the college to submit a final report to specified entities by a specified date; providing for expiration of the pilot program; providing an effective date.

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

Section 1. Section 1003.482, Florida Statutes, is created to read:

1003.482 mSCALES Pilot Program.—

(1)(a) The Music-based Supplemental Content to Accelerate Learner Engagement and Success (mSCALES) Pilot Program is created within the Department of Education. The purpose of the

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

23-00815-24 2024590__

pilot program is to assist districts in adopting music-based supplemental materials that support STEM courses for middle school students.

(b) The music-based supplemental materials must be used by teachers who are certified to teach mathematics pursuant to s. 1012.55(1)(c). The supplemental materials must be used at a minimum twice per week to supplement mathematics instruction.

(c) Classes that use the supplemental materials are subject to the class size requirements of s. 1003.03.

(d) The school districts in Alachua, Marion, and Miami-Dade Counties are eligible to participate in the pilot program. District school superintendents may contact the Department of Education, in a format prescribed by the department, for their district to participate in the pilot program. Subject to legislative appropriation, the department may approve a school district to participate in the pilot program if sufficient funding is available.

(e) Participating school districts shall receive $6 per student. Eligible middle schools must be in the same attendance zone as an elementary school that participated in the Early Childhood Music Education Incentive Program.

(f) To maintain eligibility for the pilot program, a participating school district must annually certify to the department, in a format prescribed by the department, that each participating middle school within the district meets the requirements of paragraphs (b) and (c).

(2)(a) The College of Education at the University of Florida shall continuously evaluate the program's effectiveness. The College of Education must annually share the findings of its

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evaluations with the department and the Legislature.

(b) The College of Education at the University of Florida shall prepare a comprehensive final report of the program's overall effectiveness. The report must be presented, no later than October 1, 2026, to the department, the Legislature, and the Florida Center for Partnerships for Arts-Integrated Teaching.

(3) This section expires June 30, 2026.

Section 2. This act shall take effect July 1, 2024.

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The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 590
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. (Florida PTA)

Phone 407 855-7604

Address 1747 Orlando Central Pkwy
Street

Email legislator@floridapta.org

Orlando FL 32809
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Florida PTA

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SB 590
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eileen Segal Miami Dade PTA Phone (305) 995 1102

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City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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Fiscal
Committee

590
Bill Number or Topic

Amendment Barcode (if applicable)

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City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Muzology

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 602
INTRODUCER:	Fiscal Policy Committee; Environment and Natural Resources Committee and Senator DiCeglie
SUBJECT:	Release of Balloons
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carroll	Rogers	EN	**Fav/CS**
2.	Hunter	Ryon	CA	**Favorable**
3.	Carroll	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 602 prohibits the intentional release of balloons inflated with a gas that is lighter than air. To effect this change, the bill removes language allowing the intentional release of fewer than 10 balloons within a 24-hour period. The bill also removes an exemption for the intentional release of biodegradable or photodegradable balloons. The bill provides that laws regulating the intentional release of balloons do not apply to a child six years of age or younger.

The bill provides that the intentional release of balloons is punishable under the Florida Litter Law. The bill also revises the definitions of "dump" and "litter" in the Florida Litter Law.

The bill takes effect July 1, 2024.

II. Present Situation:

Florida Fish and Wildlife Conservation Commission

The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.[1] FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida

[1] FLA. CONST. art. IV, s. 9.

Senate.[2] Under Article IV, Section 9 of the Florida Constitution, FWC has the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.[3]

Balloon Litter

Balloons released to celebrate special occasions eventually deflate and end up in streams, rivers, and oceans where they create hazardous conditions for wildlife.[4] Balloons are among the top ten types of debris found during coastal cleanups.[5] Balloon litter is especially deadly for marine life. Marine animals easily mistake balloons or balloon fragments for food and, once ingested, balloons can cause nutrition loss, internal injury, starvation, and death.[6] String or ribbon attached to balloons may entangle marine life, causing injury, illness, and suffocation.[7]

Release of Balloons

In the State of Florida, it is unlawful for any person, firm, or corporation to intentionally release, organize the release, or intentionally cause to be released within a 24-hour period 10 or more balloons inflated with a gas that is lighter than air. Any person may petition the circuit court to enjoin the release of 10 or more balloons if that person is a citizen of the county in which the balloons will be released.[8]

Certain additional balloon releases are allowed under the law, including:

- Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes;
- Hot air balloons that are recovered after launching;
- Balloons released indoors; or
- Balloons that are either biodegradable or photodegradable, as determined by the rule of FWC, and which are closed by a hand-tied knot in the stem of the balloon without string, ribbon, or other attachments.[9]

There has not yet been a balloon that FWC recognizes as meeting exemption requirements for biodegradability or photo degradability.[10]

Any person who violates the prohibition against intentional balloon releases is guilty of a noncriminal infraction and punishable by a fine of $250.[11]

---

[2] *Id.*; *see also* s. 379.102(1), F.S.
[3] FLA. CONST. art. IV, s. 9.
[4] Ocean Conservation Society, *Be Balloon Aware*, https://www.oceanconservation.org/be-balloon-aware/ (last visited Jan. 17, 2024).
[5] *Id.*
[6] National Oceanic and Atmospheric Administration, Marine Debris Program, *What Goes Up, Must Come Down*, https://blog.marinedebris.noaa.gov/index.php/what-goes-must-come-down/ (last visited Jan. 17, 2024).
[7] *Id.*
[8] Section 379.233(4), F.S.
[9] Section 379.233(2), F.S.
[10] Jess Melkun, FWC, *Release of balloons* (email on file with the Senate Committee on Environment and Natural Resources).
[11] Section 379.233(3), F.S.

Florida Litter Law

The Florida Litter Law provides that, unless otherwise authorized by law or permit, it is unlawful to dump[12] litter[13] in or on any:

- Public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor;
- Freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals;
- Water control district property or canal right-of-way, unless the district board of directors or the district manager or his or her designee has given prior consent; or
- Private property, unless the owner has given prior consent and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.[14]

The penalties for dumping litter typically correspond with the amount of litter discarded.[15] The following table shows the penalties associated with the amount of litter dumped.

Amount of Litter	Penalty
≤ 15 pounds or ≤ 27 cubic feet	Noncriminal infraction, punishable by a civil penalty of $150
> 15 pounds, but ≤ 500 pounds or > 27 cubic feet, but ≤ 100 cubic feet	First-degree misdemeanor, punishable by imprisonment for up to one year and a $1,000 fine
> 500 pounds or > 100 cubic feet	Third-degree felony, punishable by imprisonment for up to five years and a $5,000 fine

III. Effect of Proposed Changes:

Section 1 amends s. 379.233, F.S., which provides that it is unlawful to intentionally release, organize the release of, or intentionally cause to be released balloons inflated with a gas that is lighter than air. The bill deletes language allowing the intentional release of fewer than 10 balloons within a 24-hour period. The bill removes the exemption allowing the intentional release of biodegradable or photodegradable balloons which are closed by a hand-tied knot in the stem of the balloon without string, ribbon, or other attachments.

The bill provides that a person who intentionally releases balloons in violation of the law commits a noncriminal littering infraction. Current statutory language provides that the person is

[12] "Dump" means to dump, throw, discard, place, deposit, drain, discharge, or dispose of. Section 403.413(2), F.S.
[13] "Litter" means any personal property; garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; pharmaceutical of any kind; tire; household item; shed; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part, including a truck, trailer, or motor home; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations, but excluding permitted, regulated, or authorized drainage, pumping, or runoff of surface water or stormwater. Section 403.413(2), F.S.
[14] Section 403.413(4), F.S.
[15] Section 403.413(6), F.S.

guilty of a noncriminal infraction. The bill provides that a violation is punishable under the Florida Litter Law.

The bill provides that this section regulating the intentional release of balloons does not apply to a person 6 years of age or younger.

The bill removes language allowing any person to petition the circuit court to enjoin the release of 10 or more balloons if that person is a citizen of the county in which the balloons are to be released.

Section 2 amends s. 403.413, F.S., to revise the following definitions in the Florida Litter Law:
- "Dump," by adding that the term includes, with respect to balloons, to intentionally release, organize the release of, or intentionally cause to be released;
- "Litter," by adding balloon.

The bill provides that a person who is 6 years of age or younger who intentionally releases, organizes the release of, or intentionally causes to be released balloons as prohibited by statute does not violate the Florida Litter Law and is not subject to its penalties.

Section 3 reenacts s. 403.4135(1), F.S., for the purpose of incorporating the amendment made by this bill to the Florida Litter Law in a reference thereto.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is currently a $250 fine that is deposited into the fine and forfeiture fund of the clerk of court for the county where the infraction occurred. The bill changes the infraction to a littering violation, which has a civil penalty of $150, of which $50 is deposited into the Solid Waste Management Trust Fund in the Department of Environmental Protection (DEP). Thus, the bill may cause an indeterminate negative fiscal impact to local governments for the reduction in penalties and an indeterminate positive fiscal impact to DEP.[16]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 379.233 and 403.413 of the Florida Statutes.

This bill reenacts 403.4135(1) 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 Fiscal Policy on February 27, 2024:
The committee substitute:

- Provides that laws regulating the intentional release of balloons do not apply to a child six years of age or younger.
- Specifies that a child six years of age or younger who intentionally releases one or more balloons does not violate the Florida Litter Law and is not be subject to its penalties.

[16] Florida Fish and Wildlife Conservation Commission, *2024 Agency Legislative Bill Analysis: SB 602*, 3-4 (on file with the Senate Committee on Environment and Natural Resources).

- Clarifies that the term "dump," as defined in the Florida Litter Law, includes, with respect to balloons, to intentionally release, organize the release of, or intentionally cause to be released.

CS by Environment and Natural Resources on January 10, 2024:
The committee substitute restores the term "personal property" in the definition of litter.

B. Amendments:

None.

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

624736

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 69

and insert:

(4) This section does not apply to a person 6 years of age or younger ~~Any person may petition the circuit court to enjoin the release of 10 or more balloons if that person is a citizen of the county in which the balloons are to be released~~.

Section 2. Paragraphs (d) and (f) of subsection (2) and paragraph (a) of subsection (6) of section 403.413, Florida

624736

Statutes, are amended to read:

403.413 Florida Litter Law.—

(2) DEFINITIONS.—As used in this section:

(d) "Dump" means to dump, throw, discard, place, deposit, drain, discharge, or dispose of. The term includes, with respect to balloons, to intentionally release, organize the release of, or intentionally cause to be released.

(f) "Litter" means any personal property; garbage; rubbish; trash; refuse; can; bottle; box; container; paper; balloon; tobacco product; pharmaceutical of any kind; tire; household item; shed; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part, including a truck, trailer, or motor home; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations, but excluding permitted, regulated, or authorized drainage, pumping, or runoff of surface water or stormwater.

(6) PENALTIES; ENFORCEMENT.—

(a)1. Except as provided in subparagraphs ~~subparagraph~~ 2. and 3., any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes commits a noncriminal infraction, punishable by a civil penalty of $150, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095.

624736

2.a. If a person violates subparagraph 1. by intentionally dumping litter onto private property for the purpose of intimidating or threatening the owner, resident, or invitee of such property, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

b. If a person violates subparagraph 1. by intentionally dumping litter onto private property for the purpose of intimidating the owner, resident, or invitee of such property and such litter contains a credible threat, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subparagraph, the term "credible threat" has the same meaning as in s. 784.048(1).

c. If the penalty for a violation of this subparagraph is reclassified under s. 775.085, such a violation is considered a hate crime for purposes of the reporting requirements of s. 877.19.

3. A person who is 6 years of age or younger who intentionally releases, organizes the release of, or intentionally causes to be released balloons as prohibited by s. 379.233 does not violate subsection (4) and is not subject to the penalties specified in subparagraph 1.

In addition, the court may require a person who violates this subsection to pick up litter or perform other labor commensurate with the offense committed.

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

And the title is amended as follows:

624736

Delete lines 10 - 14
and insert:
penalty for such violation; providing applicability; deleting a provision authorizing petitions to enjoin the release of balloons under certain circumstances; amending s. 403.413, F.S.; revising the definitions of the terms “dump” and “litter”; exempting certain persons from litter law penalties relating to the release of balloons; reenacting s. 403.4135(1), F.S.,

201442

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete lines 48 - 50

and insert:

(4) This section does not apply to a person 6 years of age or younger ~~Any person may petition the circuit court to enjoin the release of 10 or more balloons if that person is a citizen of the county in which the balloons are to be released~~.

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

201442

And the title is amended as follows:

Delete line 10

and insert:

penalty for such violation; providing applicability; deleting a provision

By the Committee on Environment and Natural Resources; and Senator DiCeglie

592-02016-24 2024602c1

A bill to be entitled

An act relating to the release of balloons; amending s. 379.233, F.S.; revising a prohibition on the release of certain balloons to delete a specified timeframe and number of balloons; deleting an exemption from such prohibition for certain biodegradable or photodegradable balloons; providing that a person who violates the prohibition commits the noncriminal infraction of littering; revising the penalty for such violation; deleting a provision authorizing petitions to enjoin the release of balloons under certain circumstances; amending s. 403.413, F.S.; revising the definitions of the terms "dump" and "litter"; reenacting s. 403.4135(1), F.S., relating to litter receptacles, to incorporate the amendment made to s. 403.413, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsections (2), (3), and (4) of section 379.233, Florida Statutes, are amended to read:

379.233 Release of balloons.—

(2) It is unlawful for any person, firm, or corporation to intentionally release, organize the release of, or intentionally cause to be released ~~within a 24-hour period 10 or more~~ balloons inflated with a gas that is lighter than air except for any of the following:

(a) Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes.~~;~~

(b) Hot air balloons ~~that are~~ recovered after launching.~~;~~

(c) Balloons released indoors~~; or~~

~~(d) Balloons that are either biodegradable or photodegradable, as determined by rule of the Fish and Wildlife Conservation Commission, and which are closed by a hand-tied knot in the stem of the balloon without string, ribbon, or other attachments. In the event that any balloons are released pursuant to the exemption established in this paragraph, the party responsible for the release shall make available to any law enforcement officer evidence of the biodegradability or photodegradability of said balloons in the form of a certificate executed by the manufacturer. Failure to provide said evidence shall be prima facie evidence of a violation of this act~~.

(3) Any person who violates subsection (2) commits ~~is guilty of~~ a noncriminal littering infraction, punishable as provided in s. 403.413(6)(a) ~~by a fine of $250~~.

~~(4) Any person may petition the circuit court to enjoin the release of 10 or more balloons if that person is a citizen of the county in which the balloons are to be released.~~

Section 2. Paragraphs (d) and (f) of subsection (2) of section 403.413, Florida Statutes, are amended to read:

403.413 Florida Litter Law.—

(2) DEFINITIONS.—As used in this section:

(d) "Dump" means to dump, throw, discard, place, deposit, drain, discharge, ~~or~~ dispose of, or intentionally release.

(f) "Litter" means any personal property; garbage; rubbish; trash; refuse; can; bottle; box; container; paper; balloon;

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

tobacco product; pharmaceutical of any kind; tire; household item; shed; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part, including a truck, trailer, or motor home; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations, but excluding permitted, regulated, or authorized drainage, pumping, or runoff of surface water or stormwater.

Section 3. For the purpose of incorporating the amendment made by this act to section 403.413, Florida Statutes, in a reference thereto, subsection (1) of section 403.4135, Florida Statutes, is reenacted to read:

403.4135 Litter receptacles.—

(1) DEFINITIONS.—As used in this section "litter" and "vessel" have the same meanings as provided in s. 403.413.

Section 4. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/2024
Meeting Date

Fiscal Policy
Committee

602
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lorena Holley

Phone 8503452277

Address 227 S Adams
Street

Email Lorena@frf.org

Tallahassee FL 32312
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Retail Federation

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

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2/27/2024
Meeting Date

Fiscal Policy
Committee

602
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jordyn Ferguson

Phone 586-219-6249

Address 113 E. College Ave Ste. 300
Street

Email jferguson@shumakeradvisors.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Ocean Conservancy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3-27-24
Meeting Date

EP
Committee

602
Bill Number or Topic

Amendment Barcode (if applicable)

Name DAVID CULLEN

Phone 941-323-2404

Address 816 W THARPE ST
Street

Email CULLENASEA@GMAIL.COM

TALLAHASSEE FL 32303
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
SIERRA CLUB FLORIDA

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-27-24
Meeting Date

Fiscal Policy
Committee

602
Bill Number or Topic

Amendment Barcode (if applicable)

Name Travis Moore

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Address P.O. Box 2020
Street

Email travis@moore-Relations.com

St. Petersburg FL 33731
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Oceana

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

602
Bill Number or Topic

624736
Amendment Barcode (if applicable)

Name Jordyn Ferguson

Phone 586-219-6249

Address 113 E. College Ave Ste. 300
Street

Email jferguson@shumakeradvisors.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/CS/SB 718
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Collins and others
SUBJECT:	Exposures of First Responders to Fentanyl and Fentanyl Analogs
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaughan	Stokes	CJ	**Fav/CS**
2.	Atchley	Harkness	ACJ	**Fav/CS**
3.	Vaughan	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 718 creates s. 893.132, F.S., relating to dangerous fentanyl exposure of first responders resulting in overdose or serious bodily injury. First responders as defined in the bill include an emergency medical technician, a paramedic, a firefighter, a correctional officer, a correctional probation officer, and a state or local law enforcement officer, who is acting in his or her official capacity.

The bill provides that it is a second degree felony for a person 18 years of age or older who, in the course of unlawfully possessing dangerous fentanyl or fentanyl analogs, recklessly exposes a first responder to such substance that results in an overdose or serious bodily injury of the first responder.

Dangerous fentanyl or fentanyl analogs means any controlled substance described in s. 893.135(1)(c)4.a.(I)-(VII), F.S.

The bill amends s. 893.21, F.S., to provide immunity from arrest and prosecution for a person who acting in good faith, seeks medical assistance because he or she, or another person is experiencing an alcohol or drug related overdose.

The bill will have a positive insignificant prison bed impact. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2024.

II. Present Situation:

Fentanyl is a controlled substance as defined in s. 893.03, F.S., which classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the potential for abuse[1] of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

"Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally."[2] Fentanyl is a Schedule (2)(b) controlled substance.[3] Drug offenses currently account for 23.6 percent of all new prison admissions in the Department of Corrections.[4]

---

[1] Section 893.035(3)(a), F.S., defines potential for abuse as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

[2] National Institute on Drug Abuse, *Fentanyl DrugFacts,* (footnotes omitted), available at https://nida.nih.gov/publications/drugfacts/fentanyl (last visited on December 21, 2023). As a medicine, fentanyl is "typically used to treat patients with severe pain, especially after surgery[,]" and "is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids." Id.

[3] Section 893.03(2)(b)9., F.S.

[4] Florida Department of Corrections, *Florida's Criminal Punishment Code: Assessment and Analysis*, available at, https://fdc.myflorida.com/pub/scoresheet/criminal%20Punishment%20Code%202023.pdf (last visited January 16, 2024).

Controlled Substance Analog

A "controlled substance analog" is defined in s. 893.0356(2)(a), F.S., as a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.

Crimes Related to Fentanyl and Related Substances

Sale of a Controlled Substance

Section 893.13(1), F.S., prohibits a person from selling, manufacturing,[5] or delivering,[6] or possessing with the intent to sell, manufacture, or deliver a controlled substance. The penalty for selling a controlled substance varies depending on several factors, including the type and amount of the substance sold, and the location where the sale takes place.

Under current law, selling, manufacturing, or delivering, or possessing with the intent to sell, manufacture, or deliver, fentanyl, alfentanil, carfentanil, sufentanil, a fentanyl derivative, a controlled substance analog is punishable as a second degree felony.[7,8]

Sale of a Controlled Substance to a Minor

Section 893.13(4), F.S., prohibits a person 18 years of age or older from:

- Delivering a controlled substance to a person younger than 18 years of age;
- Using or hiring a person younger than 18 years of age as an agent or employee in the sale or delivery of a controlled substance; or
- Using a person younger than 18 years of age to assist in avoiding detection or apprehension for a violation of ch. 893, F.S.

A violation is punishable as either a first, second, or third degree felony depending on the controlled substance that is sold or delivered.

---

[5] "Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by: a practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice; a practitioner, or his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale. Section 893.02(15)(a), F.S.

[6] "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. Section 893.02(6), F.S.

[7] A second degree felony is punishable by a term of imprisonment not exceeding 30 years and a $10,000 fine. Sections 775.082 and 775.083, F.S.

[8] Section 893.13(1)(a)1., F.S.

Under current law, delivering fentanyl or fentanyl derivatives to a person younger than 18 years of age is punishable as a first degree felony.[9]

Distribution Resulting in Overdose or Serious Bodily Injury

Section 893.131, F.S., provides that a person 18 years of age or older who unlawfully distributes[10] the following substances and an overdose or serious bodily injury of the user results, commits a second degree felony:

- Heroin, as described in s. 893.03(1)(b)11., F.S.;
- Alfentanil, as described in s. 893.03(2)(b)1., F.S.;
- Carfentanil, as described in s. 893.03(2)(b)6., F.S;
- Fentanyl, as described in s. 893.03(2)(b)9., F.S;
- Sufentanil, as described in s. 893.03(2)(b)30., F.S;
- Fentanyl derivatives, as described in s. 893.03(1)(a)62., F.S;
- A controlled substance analog, as described in s. 893.0356, F.S, of any substance specified above; or
- A mixture containing any substance specified above.

The substance or mixture must be proved to have caused or been a substantial factor in causing the overdose or serious bodily injury.

A second or subsequent violation is a first degree felony.[11]

Drug Trafficking

Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into the state, or is in actual or constructive possession of, a specified quantity of a controlled substance.[12] Generally, a drug trafficking offense is punishable as a first degree felony.[13,14] Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense. Drug trafficking offenses are subject to mandatory minimum sentences and heightened fines, which are determined by the threshold amounts.

Under s. 893.135(1)(c)4., F.S., a person commits the first degree felony offense of trafficking in dangerous fentanyl or fentanyl analogues if he or she knowingly sells, purchases, manufactures,

[9] Section 893.13(4)(a), F.S.
[10] Sections 893.131(1)(a) and 893.02, F.S., defines distribute as to deliver, other than by administering or dispensing, a controlled substance.
[11] Section 893.131(2)(b), F.S.
[12] Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone; fentanyl; phencyclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutryic (GHB); gamma-butryolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. Section 893.135, F.S.
[13] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[14] Trafficking in certain controlled substances can be a capital offense under specified circumstances. See, e.g., s. 893.135(1)(h)2., F.S. (Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine . . . who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony).

delivers, or brings into this state, or is knowingly in actual or constructive possession of four grams or more of:

- Alfentanil, as described in s. 893.03(2)(b)1., F.S.;
- Carfentanil, as described in s. 893.03(2)(b)6., F.S.;
- Fentanyl, as described in s. 893.03(2)(b)9., F.S.;
- Sufentanil, as described as in s. 893.03(2)(b)30., F.S.;
- A fentanyl derivative, as described in s. 893.03(1)(a)62., F.S.;
- A controlled substance analog, as described in s. 893.0356, F.S., of any substance described in sub-sub-subparagraphs (I)-(V); or
- A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI).

In regards to the weighing of a mixture containing a controlled substance, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture.[15]

III. Effect of Proposed Changes:

The bill creates s. 893.132, F.S., relating to dangerous fentanyl exposure of first responders resulting in overdose or serious bodily injury. The bill defines first responder to include: a emergency medical technician and a paramedic as defined in s. 401.23, F.S.,[16,17] a firefighter as defined in s. 633.102, F.S.,[18] a correctional officer as defined in s. 943.10(2), F.S.,[19] a correctional probation officer as defined in s. 943.10(3), F.S.,[20] and a state or local law enforcement officer as defined in s. 943.10, F.S.,[21] who is acting in his or her official capacity.

[15] Section 893.135(6), F.S.

[16] Section 401.23, F.S., defines "Emergency medical technician" as a person who is certified by the department to perform basic life support pursuant to this part.

[17] Section 401.23, F.S., defines "Paramedic" as a person who is certified by the department to perform basic and advanced life support pursuant to this part.

[18] Section 633.102, F.S., defines "Firefighter" as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

[19] Section 943.10(2), F.S., defines "Correctional officer" as any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

[20] Section 943.10(3), F.S., defines "Correctional probation officer" as a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

[21] Section 943.10, F.S., defines "Law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S.

The bill provides that it is a second degree felony for a person 18 years of age or older who, in the course of unlawfully possessing dangerous fentanyl or fentanyl analogs, recklessly exposes a first responder to such substance that results in an overdose or serious bodily injury of the first responder.

Dangerous fentanyl or fentanyl analogs means any controlled substance described in s. 893.135(1)(c)4.a.(I)-(VII), F.S.

Additionally, the bill defines multiple terms. "Overdose or serious bodily injury" means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

"Expose," or "exposure" means to cause any of the following, including, but not limited to, ingestion, inhalation, needle stick injury, or absorption through skin mucous membrane.

"Recklessly" means a willful or wanton disregard for safety of other persons.

The bill amends s. 893.21, F.S., to provide immunity from arrest and prosecution for a person who acting in good faith, seeks medical assistance because he or she, or another person is experiencing an alcohol or drug related overdose.

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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 determined the bill may have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).[22] The EDR provides the following information relevant to these felonies and its estimate:

> It is not known how many incidents occur each year, but news reports on the matter and research by medical professionals indicate that exposure to fentanyl by first responders is a rare event. Therefore, this new language is not expected to have a significant impact on the prison population. In FY 2022-23, the incarceration rate for a Level 4, 2nd degree felony was 27.6%.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 893.132 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/CS by Fiscal Policy on February 27, 2024:
The committee substitute:

- Removes the provision that it is a defense to the violation if the first responder acted outside of the scope of ordinary care.

[22]Office of Economic and Demographic Research, SB 718, available at, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB718.pdf. (last visited February 27, 2024).

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 13, 2024:

The committee substitute:

- Provides intent by adding "recklessly" to mean willful or wanton disregard for the safety of other persons in regards to the new 2nd degree felony offense created for exposing fentanyl to responders causing serious bodily injury.
- Provides a defense if the first responder acted outside the scope of ordinary care generally exercised by his or her profession and in doing so contributed to his or her exposure.
- Makes technical and conforming changes.

CS by Criminal Justice on January 23, 2024:

The committee substitute:

- Adds language to include correctional officers or correctional probation officers as first responders relating to fentanyl exposure.
- Reduces the penalty from a first degree felony to a second degree felony and includes language that protects the scope of ordinary care.
- Revises the crime to provide penalties for those persons who expose a first responder to fentanyl or fentanyl analogs be 18 years of age or older.

B. Amendments:

None.

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

936092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Collins) recommended the following:

Senate Amendment (with title amendment)

Delete lines 54 - 58.

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

And the title is amended as follows:

Delete line 9

and insert:

amending s. 893.21, F.S.;

By the Appropriations Committee on Criminal and Civil Justice; the Committee on Criminal Justice; and Senators Collins and Hooper

A bill to be entitled

An act relating to exposures of first responders to fentanyl and fentanyl analogs; creating s. 893.132, F.S.; defining terms; providing criminal penalties for adults who, in the course of unlawfully possessing specified controlled substances, recklessly expose a first responder to such substances and an overdose or serious bodily injury of the first responder results; providing a defense; amending s. 893.21, F.S.; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of law of a person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose; prohibiting the arrest, charging, prosecution, or penalizing under specified provisions of a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug-related overdose; providing an effective date.

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

Section 1. Section 893.132, Florida Statutes, is created to read:

893.132 Dangerous fentanyl exposure of first responder resulting in overdose or serious bodily injury.—

(1) For purposes of this section, the term:

(a) "Dangerous fentanyl or fentanyl analogs" means any controlled substance described in s. 893.135(1)(c)4.a.(I)-(VII).

(b) "Expose" or "exposure" means to cause any of the following, including, but not limited to, ingestion, inhalation, needlestick injury, or absorption through skin or mucous membranes.

(c) "First responder" means a law enforcement officer as defined in s. 943.10(1), a correctional officer as defined in s. 943.10(2), a correctional probation officer as defined in s. 943.10(3), a firefighter as defined in s. 633.102, an emergency medical technician as defined in s. 401.23, or a paramedic as defined in s. 401.23, who is acting in his or her official capacity.

(d) "Overdose or serious bodily injury" means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

(e) "Recklessly" means a willful or wanton disregard for the safety of other persons.

(2) A person 18 years of age or older who, in the course of unlawfully possessing dangerous fentanyl or fentanyl analogs, recklessly exposes a first responder to dangerous fentanyl or fentanyl analogs and an overdose or serious bodily injury of the first responder results, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) It is a defense to a violation of this section that a first responder acted outside the scope of ordinary care generally exercised by a member of his or her profession, and in doing so, caused or substantially contributed to his or her exposure.

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

Section 2. Subsections (1) and (2) of section 893.21, Florida Statutes, are amended to read:

893.21 Alcohol-related or drug-related overdoses; medical assistance; immunity from arrest, charge, prosecution, and penalization.—

(1) A person acting in good faith who seeks medical assistance for an individual experiencing, or believed to be experiencing, an alcohol-related or a drug-related overdose may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.132; s. 893.147(1); or s. 893.13(6), excluding paragraph (c), if the evidence for such offense was obtained as a result of the person's seeking medical assistance.

(2) A person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related or a drug-related overdose and is in need of medical assistance may not be arrested, charged, prosecuted, or penalized for a violation of s. 893.132; s. 893.147(1); or s. 893.13(6), excluding paragraph (c), if the evidence for such offense was obtained as a result of the person's seeking medical assistance.

Section 3. This act shall take effect October 1, 2024.

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

The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

718
Bill Number or Topic

Amendment Barcode (if applicable)

Name Wayne "Bernie" Bernoska

Phone 321-231-9116

Address 343 W. Madison Street
Street

Email bernie@fpfp.org

Tallahassee Fl. 32301
City *State* *Zip*

Reset Form

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Professional Firefighters

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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CS/CS/SB 718
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Richard Monte calvo Phone

Address State Attorney's Office - 20th Circuit Email
Street

Ft. Myers FL
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

2/27/24

2/27/24

Meeting Date

Fiscal Policy

Committee

The Florida Senate

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SB 0718

Bill Number or Topic

Amendment Barcode (if applicable)

Name Yenisbel Vilorio Vilorio

Phone

Address Portsmouth

Street

Email

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Six Action

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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Fiscal Policy
Committee

SB 718
Bill Number or Topic

Amendment Barcode (if applicable)

Name Steven B. Slade

Phone 850.322.5760

Address 300 E. Brevard St
Street

Email stevenslade@flpba.org

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
FL PBA

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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2/27/2024
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Fiscal
Committee

C S/CS/SB 718
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shirley Y. Herman

Phone 561-596-7780

Address 2600 N. Flagler Apt 207
Street

Email Shirleyyherman@aol.com

West Palm Beach, FL 33407
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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2/27/24
Meeting Date

FISCAL POLICY
Committee

718
Bill Number or Topic

Amendment Barcode (if applicable)

Name LIBBY GUZZO

Phone 850-245-0155

Address CAPITOL - PL01
Street

Email LIBBY.GUZZO@MYFLORIDALEGAL.COM

TLH FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
OFFICE OF ATTORNEY GENERAL

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

FISCAL
Committee

718
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brason — Dem Women's Club

Phone

Address 12031 CORozo
Street

Email jbrason@gmail.com

FTB FL 33418
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/27/24
Meeting Date

Fiscal
Committee

718
Bill Number or Topic

Amendment Barcode (if applicable)

Name ~~D~~ H Joan Waitkevicz Democratic Womens Club Waitkevich

Phone 561 307 3418

Address 2600 N Flagler Dr #207
Street

West Palm Beach FL 33407
City State Zip

Email dwcjoan@gmail.com

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 718
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aurelie Colon (ow-ray-lee) Phone 9548918595

Address 403 Washington Ave
Street

Email

Montgomery AL
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
SPLC Action Fund

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/27/2024
Meeting Date

Senate Fiscal Policy
Committee

SB 718
Bill Number or Topic

Amendment Barcode (if applicable)

Name Corporal Robert Palmer

Phone 239-252-0530

Address 3319 Tamiami Trail East
Street

Email

Naples | Florida | 34112
City | *State* | *Zip*

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Collier County Sheriff's Office

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 718
Bill Number or Topic

936092
Amendment Barcode (if applicable)

Name Aurelie Colon (ow-ray-lee) Phone 9548818595

Address 403 Washington Ave
Street

Email

Montgomery AL
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
SPLC Action Fund

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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Feb 27th
Meeting Date

SB 1380
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Lisa Bacot

Phone 445-8329

Address PO Box 10168
Street

Email lisa.bacot@floridatransit.org

Tallahassee FL 32302
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Florida Public Transportation Association.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	SB 732
INTRODUCER:	Senator Powell
SUBJECT:	Theft from Nonprofit Organizations
DATE:	February 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wyant	Stokes	CJ	**Favorable**
2.	Wyant	Yeatman	FP	**Favorable**

I. Summary:

SB 732 creates s. 812.0146, F.S., to reclassify theft offenses from nonprofit organizations. Whenever a person is charged with committing theft from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, the crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft is valued at:

- $50,000 or more, the offender commits a first degree felony.
- $10,000 or more, but less than $50,000, the offender commits a second degree felony.
- $300 or more, but less than $10,000, the offender commits a third degree felony.

The bill requires a person who is convicted of theft of more than $1,000 from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, to make restitution to the victim of such offense and to perform up to 500 hours of community service in addition to any other fine or sentence imposed.

The bill may have an indeterminate fiscal impact on the Department of Corrections (DOC). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Nonprofit Organizations

In accordance with s. 501(c)(3) of the Internal Revenue Code, nonprofit organizations are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may

not attempt to influence legislation as a substantial part of its activities and may not participate in any campaign activity for or against political candidates. These organizations are commonly referred to as charitable organizations.[1]

Theft

Section 812.014, F.S., provides that a person commits a theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.[2]

Second degree petit theft, a second degree misdemeanor,[3] is theft of property valued at less than $100.[4] First degree petit theft, a first degree misdemeanor,[5] is theft of property valued at $100 or more but less than $750.[6] Second degree petit theft incurs greater penalties if there is a prior theft conviction: it is a first degree misdemeanor if there is one prior conviction,[7] and a third degree felony if there are two or more prior convictions.[8]

Generally, a person commits a third degree felony[9] crime of grand theft if the property stolen is valued at $750 or more, but less than $20,000.[10] If the property stolen is $20,000 or more, but less than $100,000, the offender commits a second degree felony,[11][12] and if the property stolen is $100,000 or more, the offender commits a first degree felony.[13][14] Other items listed under this section such as the theft of a firearm or a motor vehicle may also constitute grand theft.[15]

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[1] *See* Internal Revenue Service, *Exemption Requirements –501(c)(3) Organizations*, available at: https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations (Last visited January 8, 2024).
[2] Section 812.014(1), F.S.
[3] A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine of up to $500. Sections 775.082 and 775.083, F.S.
[4] Section 812.014(3)(a), F.S.
[5] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine of up to $1,000. Sections 775.082 and 775.083, F.S.
[6] Section 812.014(2)(e), F.S.
[7] Section 812.014(3)(b), F.S.
[8] Section 812.014(3)(c), F.S.
[9] A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.
[10] Section 812.014(2)(c)1.-3., F.S.
[11] Section 812.014(2)(b), F.S.
[12] A second degree felony is generally punishable by not more than 15 years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.
[13] Section 812.014(2)(a)1., F.S.
[14] A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.
[15] Section 812.014(2)(c), F.S.

Reclassification

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.[16]

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous convictions. A third degree felony retail theft offense is reclassified to a second degree felony if the person has a previous retail theft conviction in violation of s 812.015(8), F.S.[17]

Reclassification under s. 812.0145, F.S., is similar to the reclassification provided in the bill for theft from a qualified charitable organization. Section 812.0145, F.S., reclassifies theft offenses when the victim is 65 years of age or older. Whenever a person is charged with committing theft from a person 65 years of age or older, when he or she knows or has reason to believe that the victim was 65 years of age or older, the crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft is valued at:

- $50,000 or more, the offender commits a first degree felony.
- $10,000 or more, but less than $50,000, the offender commits a second degree felony.
- $300 or more, but less than $10,000, the offender commits a third degree felony.[18]

A person who is convicted of theft of more than $1,000, from a person who is 65 years of age or older, is required to make restitution to the victim of such offense and to perform up to 500 hours of community service work in addition to any fine or sentence imposed and must not be in lieu thereof.[19]

III. Effect of Proposed Changes:

The bill creates s. 812.0146, F.S., to reclassify theft offenses from nonprofit organizations. Whenever a person is charged with committing theft from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, the crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft is valued at:

- $50,000 or more, the offender commits a first degree felony.

[16] Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.083, F.S., provides the following maximum fines; $500 for a second degree misdemeanor; $1,000 for a first degree misdemeanor; $5,000 for a third degree felony; and $10,000 for a second degree felony and a first degree felony.
[17] Section 812.015(9)(a), F.S.
[18] Section 812.0145(2)(a-c), F.S.
[19] Section 812.0145(1), F.S.

- $10,000 or more, but less than $50,000, the offender commits a second degree felony.
- $300 or more, but less than $10,000, the offender commits a third degree felony.

A person who is convicted of theft of more than $1,000 from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, is required to make restitution to the victim of such offense and to perform up to 500 hours of community service in addition to any other fine or sentence imposed.

The bill is effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a positive indeterminate prison bed impact due to an increased number of offenders receiving enhanced sentences under this section.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 812.0146 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 Senator Powell

24-00456-24 2024732__

A bill to be entitled

An act relating to theft from nonprofit organizations; creating s. 812.0146, F.S.; providing for the reclassification of certain theft offenses of specified amounts from nonprofit organizations; requiring in certain cases that the judge require restitution and community service in addition to any fine or sentence imposed; providing an effective date.

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

Section 1. Section 812.0146, Florida Statutes, is created to read:

812.0146 Theft from a nonprofit organization; reclassification of offenses.—

(1) When a person is charged with committing theft from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, the offense for which the person is charged shall be reclassified as follows:

(a) If the funds, assets, or property involved in the theft from such an organization is valued at $50,000 or more, the offender commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the funds, assets, or property involved in the theft from such an organization is valued at $10,000 or more, but less than $50,000, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

24-00456-24 2024732__

(c) If the funds, assets, or property involved in the theft from such an organization is valued at $300 or more, but less than $10,000, the offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) When a person who is convicted of theft of more than $1,000 from an organization that he or she knows or has reason to believe is a nonprofit organization that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code, the sentencing judge, in addition to any fine or sentence imposed, shall order the person to make restitution to the victim of such offense and perform up to 500 hours of community service.

Section 2. This act shall take effect October 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

FISCAL
Committee

732
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brason Dem Women's Club

Phone 5618152881

Address 12031 Corozo Ct
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City State Zip

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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	SB 958
INTRODUCER:	Senators Martin and Perry
SUBJECT:	Local Government Employees
DATE:	February 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Sneed	McKnight	AHS	**Favorable**
3.	Hackett	Yeatman	FP	**Favorable**

I. Summary:

SB 958 raises the statutory base salary rates for tax collectors and district school superintendents by $5,000. The bill also:

- Allows tax collector employees to be eligible for a lump-sum monetary benefit for adopting a child from the child welfare system;
- Allows county tax collectors to budget for and pay a hiring or retention bonus to employees, if such expenditure is approved by the Department of Revenue or board of county commissioners; and
- Allows district school boards to contract with the county tax collector for a tax collector employee to administer road tests for driver licensure on school grounds at schools within the district.

The bill has a significant negative fiscal impact on state government and may have an insignificant negative fiscal impact on local governments. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Compensation of County Officials

Article II, s. 5(c), of the Florida Constitution, requires the powers, duties, compensation and method of payment of state and county officers to be determined by general law.[1] Chapter 145, F.S., conveys legislative intent to provide uniform compensation of county officials that have

[1] FLA. CONST. art. II, s. 5(c).

substantially equal duties and responsibilities across different counties.[2] Chapter 145, F.S., outlines the salary schedules for specified county officials "based on a classification of counties according to each county's population."[3]

The salary schedules for the following county officers are provided in ss. 145.031- 145.11, F.S.: board of county commissioners, clerk of the circuit court, county comptroller, sheriff, supervisor of elections, property appraiser, and tax collector (see below for *Salary Schedules for County Officials*). Each county officer receives a salary of the amount indicated in the schedule, based on the population of the officer's respective county. Additional compensation is made "for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate."[4]

The statutory salary provisions apply to all designated officers in all counties, except those officials whose salaries are not subject to being set by the Legislature due to the provisions of a county home rule charter or are officials of counties that have a chartered consolidated form of government as provided in h. 67-1320, L.O.F., (i.e., Duval County).[5] The adoption of a charter provides the county's electors with a mechanism to fundamentally alter the form of county government and the status of constitutional officers.

Salary Computation Methodology and Formula

Computation of a county official's salary begins by determining the following amounts provided in the statutory salary schedules for county officials, outlined in ss.145.031-145.11, F.S.:

- The relevant population group number for the elected officer, based on the county's population range;
- The official's relevant base salary and group rate according to his or her prescribed salary schedule; and
- The difference between the county's population estimate and the minimum group rate.[6]

After determining these figures, the following computation formula is then used to calculate the county official's salary:[7]

Salary = ***[Base Salary + (Population above Group Minimum x Group Rate)] x Initial Factor x Certified Annual Factor x Certified Cumulative Annual Factor***

Section 145.19(1), F.S., defines the terms "annual factor," "cumulative annual factor," and "initial factor," as follows:

[2] Section 145.011(3), F.S.
[3] Section 145.011(4), F.S.
[4] Sections 145.031, 145.051, 145.071, 145.09, 145.10 and 145.11, F.S.
[5] Section 145.011, F.S.
[6] Office of Economic and Demographic Research, *Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2022-23*, at 4. (Sept. 2022) available at http://edr.state.fl.us/Content/local-government/reports/finsal22.pdf (last visited Jan. 14, 2024).
[7] *Id.*

- *Annual Factor* means 1 plus the lesser of either: 1) the average percentage increase in the salaries of state career service employees for the current fiscal year as determined by the Department of Management Services or as provided in the General Appropriations Act; or 2) 7 percent.
- *Cumulative Annual Factor* means the product of all annual factors certified under this act prior to the fiscal year for which salaries are being calculated.
- *Initial Factor* means a factor of 1.292, which is the product, rounded to the nearest thousandth, of an earlier cost-of-living increase factor authorized by Chapter 73-173, Laws of Florida, and intended by the Legislature to be preserved in adjustments to salaries made prior to the enactment of Chapter 76-80, Laws of Florida, multiplied by the annual increase factor authorized by Chapter 79-327, Laws of Florida.

In 2022, the Office of Economic and Demographic Research provided the following sample computation for the Alachua County Clerk of Circuit Court, Property Appraiser, Supervisor of Elections, and Tax Collector:

Sample Computation of Salary[8]
Officer: Alachua County Clerk of Court, Property Appraiser, Supervisor of Elections, and Tax Collector 2021 Population Estimate: 284,607 Group Number Minimum (IV): 200,000 Corresponding Base Salary (Group IV): $30,175 Corresponding Group Rate (Group IV): $0.01575 Initial Factor: 1.292 Certified Annual Factor: 1.0700 Certified Cumulative Annual Factor: 3.6524

Salary = [$30,175 + [(284,607-200,000) x 0.01575]] x 1.292 x 1.0700 x 3.6524 = $159,089

Salary Schedules for County Officials:[9]

Elected County Constitutional Officers	**Population Group Numbers**	**County Population Range**		**Base Salary**	**Group Rate**
		Minimum	**Maximum**		
Clerk of Circuit Court Supervisor of Elections County Comptroller Property Appraiser Tax Collector *(ss. 145.051, 145.09, 145.10, and 145.11, F.S.)*	I	-0-	49,999	$21,250	$0.07875
	II	50,000	99,999	$24,400	$0.06300
	III	100,000	199,999	$27,550	$0.02625
	IV	200,000	399,999	$30,175	$0.01575
	V	400,000	999,999	$33,325	$0.00525
	VI	1,000,000		$36,475	$0.00400
Sheriff [10] *(s.145.071, F.S*	I	-0-	49,999	$28,350	$0.07875
	II	50,000	99,999	$31,500	$0.06300

[8] *Office of Economic and Demographic Research, Salaries of Elected County Constitutional Officers and School District Officials for Fiscal Year 2022-23, at 4. (Sept. 2022) available at http://edr.state.fl.us/Content/local-government/reports/finsal22.pdf (last visited Jan. 14, 2024).*
[9] Sections 145.031(1), 145.051(1), 145.071(1), 145.09(1), 145.10(1) and 145.11(1), F.S.
[10] Sheriff salary base rates were raised by $5,000 by the Legislature in 2022. *See* ch. 2022-23, Laws of Fla.

	III	100,000	199,999	$34,650	$0.02625
	IV	200,000	399,999	$37,275	$0.01575
	V	400,000	999,999	$40,425	$0.00525
	VI	1,000,000		$43,575	$0.00400

Compensation of Elected District School Superintendents

District school superintendents may be either an elected position or one employed by the district school board.[11] Elected district school superintendents are compensated as provided by s. 1004.47, F.S., which mirrors the compensation methodology and base salary rates for county Constitutional officers other than the Sheriff.

Bonuses and Severance Pay Prohibited

Section 215.425, F.S., prohibits state employers from paying extra compensation after a service has been rendered or a contract made unless such compensation is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature.

Florida Law Enforcement Recruitment Bonus Payment Program

In 2022, the Legislature established the Law Enforcement Recruitment Bonus Payment Program, which administers one-time bonus payments of up to $5,000 to newly employed officers in Florida, subject to legislative appropriation.[12] This program expires on July 1, 2025.

Adoption Benefits

Section 409.1664, F.S., provides a lump-sum monetary benefit to a qualifying adoptive employee,[13] veteran, or servicemember who adopts a child within Florida's child welfare system[14] of $10,000 for adopting a child who meets the definition of difficult-to-place[15] or $5,000 for adopting a child who does not meet the difficult-to-place definition. A Florida law enforcement officer is eligible for a lump-sum monetary benefit of $25,000 for adopting from the child welfare system a difficult-to-place child or $10,000 if the child is not considered difficult-to-place.

Adoption benefits are awarded on a first-come, first-served basis and subject to appropriation.[16] To obtain the adoption benefit, a qualifying adoptive employee must apply to his or her agency head or to his or her school director. A veteran or servicemember must apply directly to the

[11] FLA. CONST., art. IX, s. 5.
[12] Section 445.08, F.S.
[13] "Qualifying adoptive employee" means a full-time or part-time employee of a state agency, a charter school, or the Florida Virtual School, who is not an independent contractor and who adopts a child within the child welfare system pursuant to ch 63, F.S. Section 409.1664(1)(b), F.S.
[14] "Child within the child welfare system" means a difficult-to-place child and any other child who was removed from the child's caregiver due to abuse or neglect and whose permanent custody has been awarded to the department or to a licensed child-placing agency. Section 409.166(2)(c), F.S.
[15] For purposes of the adoption benefit program, a child who has special needs is a child whose permanent custody has been awarded to the Department of Children and Families or to a licensed child-placing agency and who has established significant emotional ties with his or her foster parents or is not likely to be adopted. Section 409.166(2), F.S.
[16] Section 409.1664(2)(c) and (3), F.S.

Department of Children and Families (DCF) to receive the benefit, while a law enforcement officer must apply to the Florida Department of Law Enforcement.[17]

Child Welfare System Adoption Benefits (Fiscal Years 2019-2020 through 2022-2023):

Fiscal Year	Child Welfare Adoptions	Number of Awards	Awards as a Percent of Child Welfare Adoptions	Appropriations	Expenditures
2019-20	4,548	275	6%	$2,750,000	$2,732,000
2020-21	3,904	263	7%	$2,750,000	$2,674,370
2021-22	3,888	323	8%	$3,233,700	$3,225,000
2022-23	3,602	412	11%	$8,377,470	$4,345,000

The DCF holds an annual open enrollment period to receive applications for the adoption monetary benefit between the first business day in January and the last business day of March. For multiple adoptions, the applicant must submit a separate application for each child. The DCF must review all timely applications and determine who is eligible to receive the benefit. Applications[18] are processed in the order they were received during the open enrollment period.[19]

Applicants must include in their application packets a certified copy of the final order of adoption naming the applicant as the adoptive parent. While the Chief Financial Officer of the DCF transfers the funds to award recipients, not every applicant can apply for the adoption monetary benefit directly to the DCF. Current law requires veterans and servicemembers to apply directly to the DCF to receive the benefit; however, state employees must apply to their own agency head, employees at a charter school[20] or the Florida Virtual School[21] must apply to their respective school director, and a law enforcement officer must apply to the Florida Department of Law Enforcement.[22]

When the demand for the adoption benefit exceeds the supply of appropriated funds, denied applicants do not have to submit a new application during the next open enrollment period. Instead, the DCF will automatically consider this pool of eligible applicants for future appropriations.[23]

Instruction in Motor Vehicle Operation

Each school district is responsible for providing a course of study and instruction in the safe and lawful operation of a motor vehicle that is available to students in secondary schools.[24] The

[17] Section 409.1664(3), F.S.
[18] Florida Department of Children and Families, *CF-FSP 5327 Adoption Benefits For State Employees And Other Eligible Applicants*, (Oct. 21, 2022) https://www.flrules.org/Gateway/reference.asp?No=Ref-14887 (last visited Feb. 7, 2024).
[19] R. 65C-16.021; *see* s. 409.1664(6), F.S.
[20] All charter schools in Florida are public schools and part of the state's program of public education. s. 1002.33(1), F.S.
[21] The Florida Virtual School provides online and distance learning education. The school is governed by a board of trustees appointed by the Governor, and the board of trustees is a public agency. Current law advises that all employees except temporary, seasonal, and student employees may be classified as state employees for purposes of Florida Retirement System benefits. S. 1002.37, F.S.
[22] Ss. 409.1664(3), (7), F.S.
[23] R. 65C-16.021; *see* s. 409.1664(6), F.S.
[24] S. 1003.48(1), F.S.

course may use instructional personnel employed by the school district or contract with a commercial driving school or instructor certified under ch. 488, F.S.[25] The courses are financed by a $0.50 annual fee charged to each driver as part of the driver license fee.[26]

III. Effect of Proposed Changes:

Section 1 amends s. 145.11, F.S., to raise the salary base rates for tax collectors by $5,000.

Section 4 amends s. 1001.47, F.S., to raise the salary base rates for district school superintendents by $5,000.

The table below reflects salary adjustments made by the bill:

Elected County Officials	Population Group #	County Population Range		Current Law Base Salary	Base Salary Under Bill
		Minimum	Maximum		
Tax Collectors and District School Superintendents	I	-0-	49,999	$21,250	$26,250
	II	50,000	99,999	$24,400	$29,400
	III	100,000	199,999	$27,550	$32,550
	IV	200,000	399,999	$30,175	$35,175
	V	400,000	999,999	$33,325	$38,325
	VI	1,000,000		$36,475	$41,475

Section 2 amends s. 409.1664, F.S., to add tax collector employees who are domiciled in Florida and who adopt a child within the child welfare system on or after July 1, 2024, as eligible for the lump-sum monetary benefit.

The benefit is $25,000 for adopting a child who is "difficult-to-place" and $10,000 for adopting a child who is not "difficult-to-place." The bill requires a tax collector employee to apply to the Florida Department of Children and Families to obtain the adoption benefit.

Section 3 creates s. 445.09, F.S., to provide that, notwithstanding any other law, a county tax collector may budget for and pay a hiring or retention bonus if such expenditure is approved by the department of Revenue in the respective budgets of the property appraiser and the tax collector.

Section 5 amends s. 1003.48, F.S., to provide that a district school board may contract with the county tax collector for a tax collector employee to administer road tests for driver licensure on school grounds at one or more schools within the district.

Section 6 provides the bill takes effect July 1, 2024.

[25] S. 1003.48(2), F.S.
[26] S. 1003.48(4), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. Under the bill salaries for constitutional officers will rise. The mandate requirement does not apply to laws having an insignificant impact,[27] which for Fiscal Year 2024-2025 is forecast at approximately $2.3 million.[28]

Fiscal impact on local governments from this bill are indeterminate at this time. If costs imposed by through raising the base rate of compensation for certain elected county officials exceed $2.3 million, the mandates provisions may apply. If the bill does qualify as a mandate, in order to be binding upon counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[27] FLA. CONST. art. VII, s. 18(d).
[28] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 14, 2024).

C. Government Sector Impact:

Tax collectors and district school superintendents will have higher salaries under the bill. While the base rate increases by $5,000, actual salaries will increase by a larger amount due to calculations involved in setting those salaries. As the effect of base statutory salaries vary per county based on population and chartered status, the cumulative fiscal impact of the bill is indeterminate at this time.

The Department of Children and Families (DCF) submitted a Fiscal Year 2024-2025 budget request[29] to include in-state health care practitioners with an active license and an income at or below $150,000, as well as tax collector employees to the list of individuals eligible for lump-sum monetary adoption benefits of $25,000 for adopting a difficult-to-place child in the welfare system, or $10,000 for other children. Although the DCF did not provide a projected cost solely for tax collector employees, the department's legislative budget request estimates an additional need of $9,822,530 in recurring funds from the General Revenue Fund for the increased costs anticipated with the expanded eligibility.[30]

The funding in the Senate proposed General Appropriations Bill for Fiscal Year 2024-2025 includes $2,250,000 in recurring funds from the General Revenue Fund to the DCF to increase lump-sum monetary adoption benefit payments for existing eligible adoptive employees, veterans, and servicemembers to those received by law enforcement officers. This would increase adoption benefit payments for individuals currently eligible under s. 409.1664, F.S., from $10,000 to $25,000 for adopting a difficult-to-place child in the child welfare system and from $5,000 to $10,000 for a child not considered difficult-to-place. The funding does not contemplate expanding eligibility to tax collector employees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 145.11, 409.1664, 1001.47, and 1003.48.

This bill creates section 445.09 of the Florida Statutes.

[29] The Department of Children and Families Agency Legislative Budget Request for Fiscal Year 2024-2025, Issue 4003200.
[30] *Id.*

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 Martin

33-00777-24 2024958__

A bill to be entitled

An act relating to local government employees; amending s. 145.11, F.S.; revising the base salary used to calculate the compensation of county tax collectors; amending s. 409.1664, F.S.; defining the term "tax collector employee"; providing that tax collector employees are eligible to receive specified monetary benefits from the state for adopting children within the child welfare system; authorizing tax collector employees to apply for the monetary benefits if certain conditions are met; requiring such employees to apply to the Department of Children and Families to obtain the benefits; revising construction; authorizing the department to adopt specified rules; creating s. 445.09, F.S.; authorizing specified tax collectors to budget for and pay specified bonuses to employees, pending a specified approval; amending s. 1001.47, F.S.; revising the base salary used to calculate the compensation of district school superintendents; making a technical change; amending s. 1003.48, F.S.; authorizing district school boards to contract with a county tax collector's office to administer road tests on school grounds at one or more schools within the district; providing an effective date.

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

Section 1. Subsection (1) of section 145.11, Florida

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33-00777-24 2024958__

Statutes, is amended to read:

145.11 Tax collector.—

(1) Each tax collector shall receive as salary the amount indicated, based on the population of his or her county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate.

Pop. Group	County Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I			$26,250	
	-0-	49,999	~~$21,250~~	$0.07875
II			29,400	
	50,000	99,999	~~24,400~~	0.06300
III			32,550	
	100,000	199,999	~~27,550~~	0.02625
IV			35,175	
	200,000	399,999	~~30,175~~	0.01575
V			38,325	
	400,000	999,999	~~33,325~~	0.00525

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

VI		41,475	
	1,000,000	~~36,475~~	0.00400

Section 2. Section 409.1664, Florida Statutes, is amended to read:

409.1664 Adoption benefits for qualifying adoptive employees of state agencies, veterans, servicemembers, ~~and~~ law enforcement officers, and tax collector employees.—

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

(a) "Child within the child welfare system" has the same meaning as provided in s. 409.166(2).

(b) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(c) "Qualifying adoptive employee" means a full-time or part-time employee of a state agency, a charter school established under s. 1002.33, or the Florida Virtual School established under s. 1002.37, who is not an independent contractor and who adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. The term includes instructional personnel, as defined in s. 1012.01, who are employed by the Florida School for the Deaf and the Blind, and includes other-personal-services employees who have been continuously employed full time or part time by a state agency for at least 1 year.

(d) "Servicemember" has the same meaning as in s. 250.01(19).

(e) "State agency" means a branch, department, or agency of state government for which the Chief Financial Officer processes payroll requisitions, a state university or Florida College

System institution as defined in s. 1000.21, a school district unit as defined in s. 1001.30, or a water management district as defined in s. 373.019.

(f) "Tax collector employee" means an employee of an office of the county tax collector in this state.

(g) "Veteran" has the same meaning as in s. 1.01(14).

(2) A qualifying adoptive employee, veteran, or servicemember who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 per such child, subject to applicable taxes. A law enforcement officer or tax collector employee who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $25,000 per such child, subject to applicable taxes. A qualifying adoptive employee, veteran, or servicemember who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $5,000 per such child, subject to applicable taxes. A law enforcement officer or tax collector employee who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 per each such child, subject to applicable taxes. A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the monetary benefit provided in this subsection if such employee was employed by a charter school or the Florida Virtual School when he or she

adopted a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. A veteran or servicemember may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2020. A law enforcement officer may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2022. A tax collector employee may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system under chapter 63 on or after July 1, 2024.

(a) Benefits paid to a qualifying adoptive employee who is a part-time employee must be prorated based on the qualifying adoptive employee's full-time equivalency at the time of applying for the benefits.

(b) Monetary benefits awarded under this subsection are limited to one award per adopted child within the child welfare system.

(c) The payment of a lump-sum monetary benefit for adopting a child within the child welfare system under this section is subject to a specific appropriation to the department for such purpose.

(3) A qualifying adoptive employee must apply to his or her agency head, or to his or her school director in the case of a qualifying adoptive employee of a charter school or the Florida Virtual School, to obtain the monetary benefit provided in subsection (2). A veteran, ~~or~~ servicemember, or tax collector

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employee must apply to the department to obtain the benefit. A law enforcement officer must apply to the Department of Law Enforcement to obtain the benefit. Applications must be on forms approved by the department and must include a certified copy of the final order of adoption naming the applicant as the adoptive parent. Monetary benefits shall be approved on a first-come, first-served basis based upon the date that each fully completed application is received by the department.

(4) This section does not preclude a qualifying adoptive employee, veteran, servicemember, ~~or~~ law enforcement officer, or tax collector employee from receiving adoption assistance for which he or she may qualify under s. 409.166 or any other statute that provides financial incentives for the adoption of children.

(5) Parental leave for a qualifying adoptive employee must be provided in accordance with the personnel policies and procedures of his or her employer.

(6) The department may adopt rules to administer this section. The rules may provide for an application process such as, but not limited to, an open enrollment period during which qualifying adoptive employees, veterans, servicemembers, ~~or~~ law enforcement officers, or tax collector employees may apply for monetary benefits under this section.

(7) The Chief Financial Officer shall disburse a monetary benefit to a qualifying adoptive employee upon the department's submission of a payroll requisition. The Chief Financial Officer shall transfer funds from the department to a state university, a Florida College System institution, a school district unit, a charter school, the Florida Virtual School, or a water

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management district, as appropriate, to enable payment to the qualifying adoptive employee through the payroll systems as long as funds are available for such purpose.

(8) To receive an approved monetary benefit under this section, a veteran or servicemember must be registered as a vendor with the state.

(9) Each state agency shall develop a uniform procedure for informing employees about this benefit and for assisting the department in making eligibility determinations and processing applications. Any procedure adopted by a state agency is valid and enforceable if the procedure does not conflict with the express terms of this section.

Section 3. Section 445.09, Florida Statutes, is created to read:

445.09 Bonuses for employees of tax collectors.—Notwithstanding any other law, a county tax collector may budget for and pay a hiring or retention bonus to an employee if such expenditure is approved by the Department of Revenue in the respective budget of the tax collector.

Section 4. Section 1001.47, Florida Statutes, is amended to read:

1001.47 District school superintendent; salary.—

(1) Each elected district school superintendent shall receive as salary the amount indicated pursuant to this section. However, a district school board, by majority vote, may approve a salary in excess of the amount specified in this section.

(2) Each elected district school superintendent shall receive a base salary, the amounts indicated in this subsection, based on the population of the county the elected superintendent

serves. In addition, compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the group times the group rate. The product of such calculation shall be added to the base salary to determine the adjusted base salary. Laws that increase the base salary provided in this subsection shall contain provisions on no other subject.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	49,999	$26,250 ~~$21,250~~	$0.07875
II	50,000	99,999	29,400 ~~24,400~~	0.06300
III	100,000	199,999	32,550 ~~27,550~~	0.02625
IV	200,000	399,999	35,175 ~~30,175~~	0.01575
V	400,000	999,999	38,325 ~~33,325~~	0.00525

		41,475	
VI	1,000,000	~~36,475~~	0.00400

(3) The adjusted base salaries of elected district school superintendents shall be increased annually as provided for in s. 145.19. Any salary previously paid to elected superintendents, including the salary calculated for fiscal years 2002-2003 and 2003-2004, which was consistent with chapter 145 and s. 230.303, Florida Statutes (2001), is hereby ratified and validated.

(4)(a) There shall be an additional $2,000 per year special qualification salary paid by district school boards for each elected district school superintendent who has met the certification requirements established by the Department of Education. Any elected district school superintendent who is certified during a calendar year shall receive in that year a pro rata share of the special qualification salary based on the remaining period of the year.

(b) In order to qualify for the special qualification salary provided by paragraph (a), the elected district school superintendent must complete the requirements established by the Department of Education within 6 years after first taking office.

(c) After an elected district school superintendent meets the requirements of paragraph (a), in order to remain certified the district school superintendent shall thereafter be required to complete each year a course of continuing education as prescribed by the Department of Education.

(5)(a) The Department of Education shall provide a

leadership development and performance compensation program for elected district school superintendents, comparable to chief executive officer development programs for corporate executive officers, to include:

1. A content-knowledge-and-skills phase consisting of: creative leadership models and theory, demonstration of effective practice, simulation exercises and personal skills practice, and assessment with feedback, taught in a professional training setting under the direction of experienced, successful trainers.

2. A competency-acquisition phase consisting of on-the-job application of knowledge and skills for a period of not less than 6 months following the successful completion of the content-knowledge-and-skills phase. The competency-acquisition phase shall be supported by adequate professional technical assistance provided by experienced trainers approved by the department. Competency acquisition shall be demonstrated through assessment and feedback.

(b) Upon the successful completion of both phases and demonstrated successful performance, as determined by the department, an elected district school superintendent shall be issued a Chief Executive Officer Leadership Development Certificate, and the department shall pay an annual performance salary incentive of not less than $3,000 nor more than $7,500 based upon his or her performance evaluation.

(c) An elected district school superintendent's eligibility to continue receiving the annual performance salary incentive is contingent upon his or her continued performance assessment and follow-up ~~followup~~ training prescribed by the department.

(6) Notwithstanding the provisions of this section and s. 145.19, elected district school superintendents may reduce their salary rate on a voluntary basis.

Section 5. Section 1003.48, Florida Statutes, is amended to read:

1003.48 Instruction in operation of motor vehicles; road tests.—

(1) A course of study and instruction in the safe and lawful operation of a motor vehicle shall be made available by each district school board to students in the secondary schools in the state. The secondary school shall provide preferential enrollment to a student who is in the custody of the Department of Children and Families if the student maintains appropriate progress as required by the school. As used in this section, the term "motor vehicle" has the same meaning as in s. 320.01(1)(a) and includes motorcycles and mopeds. Instruction in motorcycle or moped operation may be limited to classroom instruction. The course may not be made a part of, or a substitute for, any of the minimum requirements for graduation.

(2) In order to make such a course available to any secondary school student, the district school board may use any one of the following procedures or any combination thereof:

(a) Use instructional personnel employed by the district school board.

(b) Contract with a commercial driving school licensed under chapter 488.

(c) Contract with an instructor certified under chapter 488.

(3) District school boards shall earn funds on full-time

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equivalent students at the appropriate basic program cost factor, regardless of the method by which such courses are offered.

(4) For the purpose of financing the driver education program in the secondary schools, there shall be levied an additional 50 cents per year to the driver license fee required by s. 322.21. The additional fee shall be promptly remitted to the Department of Highway Safety and Motor Vehicles, which shall transmit the fee to the Chief Financial Officer to be deposited in the General Revenue Fund.

(5) The district school board shall prescribe standards for the course required by this section and for instructional personnel directly employed by the district school board. A certified instructor or licensed commercial driving school is sufficiently qualified and is not required to meet any standards in lieu of or in addition to those prescribed under chapter 488.

(6) District school boards may contract with the county tax collector for a tax collector employee to administer road tests on school grounds at one or more schools within the district.

Section 6. This act shall take effect July 1, 2024.

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The Florida Senate

APPEARANCE RECORD

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02/27/2024
Meeting Date

Fiscal Policy
Committee

958
Bill Number or Topic

Amendment Barcode (if applicable)

Name Brian Moore

Phone (850) 577-5784

Address 208 S. Monroe St.
Street

Email bmoore@fadss.org

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
FADSS (school superintendents)

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

958
Bill Number or Topic

Amendment Barcode (if applicable)

Name Drew Meiner

Phone 850-222-7206

Address 216 S. Monroe St
Street

Email Drew@CCCFLA.com

Tally FL
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Chuck Perdue, Bay County Tax Collector

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24
Meeting Date

Fiscal Policy
Committee

958
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tim Qualls

Phone 850-222-7206

Address 216 S Monroe
Street

Email TQualls@YULAW.NET

Tally FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Florida Tax Collectors Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1006
INTRODUCER:	Appropriations Committee on Agriculture, Environment, and General Government; Regulated Industries Committee; and Senator Perry
SUBJECT:	Nicotine Products and Dispensing Devices
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Oxamendi/Davis	Betta	AEG	**Fav/CS**
3.	Oxamendi	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1006 provides for the regulation of the wholesale and the retail sale of nicotine dispensing devices (NDDs) products such as electronic cigarettes. The bill:

- Requires manufacturers of NDDs to register with the Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation by December 1, 2024, and annually thereafter, any of its products that are sold in Florida and which have received an order from the U.S. Food and Drug Administration (FDA) authorizing the marketing of such products or has applied for such a marketing order.
- Requires manufacturers to certify under penalty of perjury the NDDs with the division and provide evidence specified in the bill of such approval from the FDA or that they have sought approval from the FDA.
- Requires the division to create a directory containing the registered NDDs.
- Requires wholesale dealers of a NDD to have a permit issued by the division.
- Requires manufacturers of NDDs to maintain certain records for a period of three years, including identifying information regarding to whom the products were sold.
- Prohibits wholesale dealers and retail dealers of NDDs from selling NDDs that are not on the division's directory of NDDs.
- Prohibits the shipment into Florida of NDDs that the FDA has ordered removed from the market, that have not been submitted for approval by the FDA, or that have not been registered with the division.

- Prohibits the sale, shipment, or distribution of NDDs if the FDA does not accept a premarket application, denies an application, or other FDA or court action negatively affects the ability of the product to be introduced or delivered into interstate commerce for commercial distribution in the United States.
- Creates the following criminal violations and penalties:
  - Third degree felony for falsely misrepresenting any of the information required to register a NDD with the division.
  - First degree misdemeanor for nicotine product manufacturers who knowingly ships or receives a NDD that the FDA has ordered removed from the market, that have not been submitted for approval by the FDA, or that have not been registered with the division;
  - Second degree misdemeanor for any person who knowingly ships or receives unregistered NDDs;
  - Second degree misdemeanor for any person who knowingly ships or receives NDDs from a manufacturer that does not have a permit issued by the division; and
- Provides administrative fines for violations and for the suspension and revocation of permits.
- Provides that all NDDs sold, delivered, possessed, or distributed in contrary to the provisions in the bill are contraband and are subject to seizure and confiscation under the Florida Contraband Forfeiture Act.
- Requires non-resident manufacturers of NDDs sold in Florida to have a registered agent in Florida to accept service of process.

The bill has a significant, negative fiscal impact on state expenditures. See Section V., Fiscal Impact Statement.

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Florida Regulation of Tobacco Products and Nicotine Dispensing Devises

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

Tobacco Products Definitions

Section 210.01(1), F.S., defines the term "cigarette" to mean:

> any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Section 569.002(6), F.S., defines the term "tobacco products" to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can

be used for smoking, sniffing, or chewing, in the context of the taxation of cigarettes under part I of ch. 210, F.S.

Section 210.25(12), F.S., provides a separate definition for the term "tobacco products" in the context of the taxation of tobacco products other than cigarettes or cigars. It provides for the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context, the term "tobacco products" means:

> loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of "tobacco products" in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Nicotine Products

Section 569.31(3), F.S., defines the term "nicotine dispensing device" to mean:

> any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Section 569.31(4), F.S., defines the term "nicotine product" to mean:

> any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:
> (a) Tobacco product, as defined in s. 569.002;
> (b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or
> (c) Product that contains incidental nicotine.
>
> (Emphasis added.)

Nicotine products, including nicotine dispensing devises such as electronic cigarettes (also commonly known as "vapes"), may contain nicotine, which comes from tobacco, but they do not

contain tobacco. It is a non-tobacco "e-liquid" that is heated and aerosolized for inhalation by the user of the device.[1]

Heated Tobacco Products

Heated tobacco products heat a compressed stick or pod of tobacco and produce an inhalable vapor or aerosol. These products do not produce smoke because the tobacco is not burned or ignited.[2] It is not clear that heated tobacco products are subject to taxation under ch. 210, F.S., as cigarettes or other tobacco products because the definitions for the terms cigarettes and tobacco products under ch. 210, F.S., do not appear to describe heated tobacco products, e.g., heated tobacco products are not smoked or chewed.

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.[3] The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed $50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.[4]

Retail Nicotine Products Dealer Permit

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.[5] There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.[6]

Taxation of Tobacco Products Other than Cigarettes or Cigars

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

DBPR Annual Report

The DBPR is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House regarding the enforcement of tobacco products, including:[7]

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 21 and the results of administrative hearings on such violations; and

[1] American Cancer Society, What Do We Know About E-cigarettes? at: https://www.cancer.org/cancer/risk-prevention/tobacco/e-cigarettes-vaping/what-do-we-know-about-e-cigarettes.html (last visited Feb. 7, 2024).
[2] Campaign for Tobacco Free Kids, *Heated Tobacco Products, Definition and Global Market*, available at: https://assets.tobaccofreekids.org/global/pdfs/en/HTP_definition_en.pdf (last visited Feb. 7, 2024).
[3] Section 569.003, F.S.
[4] Section 569.003(1)(c), F.S.
[5] Section 569.32, F.S.
[6] Section 569.32(2)(a), F.S.
[7] Section 569.19, F.S.

- The number of people under the age of 21 cited, including sanctions imposed as a result of citation.

The DBPR is required to submit a comparable annual report to the Legislature regarding compliance with the age restriction on the sale of nicotine dispensing devices.[8]

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.[9]

On August 8, 2016, the FDA extended the definition of the term "tobacco product" regulated under the Tobacco Control Act to include "electronic nicotine delivery systems" (ENDS). ENDS include nicotine delivery devices such as e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers, and electronic pipes. The definition of tobacco products also includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers. On April 14, 2022, the FDA's authority was further expanded to include tobacco products containing nicotine from any source, including synthetic nicotine.[10]

Federal law preempts states from providing additional or different requirements for tobacco products in regards to "standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.[11]

Registration by Manufacturers

Under federal law, tobacco product manufacturers[12] are required initially and annually thereafter to register with the FDA the name,[13] places of business, and all such establishments of that manufacturer in any state.[14] These manufacturers are required to register any additional places

[8] Section 569.44, F.S.
[9] Federal Food, Drug, and Cosmetic Act, 21 USC § 351 *et seq*; 15 U.S.C. s. 1333, s. 1335; 21 U.S.C. s. 387g, s. 387f.
[10] "Non-Tobacco Nicotine" (NTN) is the term used to describe nicotine that did not come from a tobacco plant. NTN includes 'synthetic' nicotine." U.S. Food and Drug Administration. *Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products*, U.S. Food and Drug Administration, www.fda.gov/tobacco-products/products-ingredients-components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products (last visited Feb. 7, 2024).
[11] 21 U.S.C. § 387p.
[12] The term "manufacture, preparation, compounding, or processing" includes "the repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." 21 USCA § 387e(a)(1).
[13] The term "name" includes the name of each partner in the case of a partnership and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation." 21 USCA § 387e(a)(2).
[14] 21 USCA § 387e(b)(c).

which they own or operate and start to manufacture, prepare, compound, or process a tobacco product or tobacco products.[15]

FDA Premarket Review Application Process for Tobacco Products[16]

Before a new tobacco product[17] can be distributed into interstate commerce, the manufacturer is required to submit a marketing application to the FDA and receive authorization.[18] These applications are reviewed by the FDA to determine whether the product meets the proper requirements to receive marketing authorization. Marketing authorization can be achieved through a Premarket Tobacco Product Application (PMTA), Substantial Equivalence (SE) Report, or Exemption from Substantial Equivalence Request (EX REQ).[19] The FDA may issue a marketing granted order, temporarily suspend a marketing order, withdraw a marketing granted order, or issue a marketing denial order.[20]

Preexisting tobacco products, i.e., tobacco products that were commercially marketed in the U.S. as of Feb. 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. before Feb. 15, 2007, may voluntarily submit an application to the FDA by May 14, 2022,[21] to receive a determination that the product is a pre-existing tobacco product. A tobacco manufacturer may challenge the FDA's determination.[22] Manufactures must hold onto records that show their tobacco products are legally on the market.

September 9, 2020, was the deadline for submitting a PMTA application for other new deemed tobacco products that were on the market as of August 8, 2016.[23]

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order.[24] The PMTA must contain information[25] for the FDA to ascertain whether there are any applicable grounds for a marketing denial order. To receive a marketing granted order:

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[15] 21 USCA § 387e(d).
[16] *See generally*, 21 U.S.C. § 387j.
[17] "A 'new tobacco product' is defined as any product not commercially marketed in the United States as of February 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. after February 15, 2007." 21 U.S.C. § 387j(1).
[18] U.S. Food and Drug Administration, *Market and Distribute a Tobacco Product*, www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product (last visited Feb 7, 2024).
[19] U.S. Food and Drug Administration, *Tobacco Products Marketing Orders*, https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders Last visited Feb. 7, 2024).
[20] 21 U.S.C. § 387j.
[21] U.S. Food and Drug Administration, *Reminder: Electronic Submission of Premarket Applications for Non-Tobacco Nicotine Products due May 14*, https://www.fda.gov/tobacco-products/ctp-newsroom/reminder-electronic-submission-premarket-applications-non-tobacco-nicotine-products-due-may-14 (last visited Feb. 7, 2024).
[22] *See* U.S. Food and Drug Administration, *Pre-Existing Tobacco Products*, June 15, 2023, at https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/pre-existing-tobacco-products (last visited February 16, 2024).
[23] FDA, Submit Tobacco Product Applications for Deemed Tobacco Products, Sept. 9, 2020, at: https://www.fda.gov/tobacco-products/manufacturing/submit-tobacco-product-applications-deemed-tobacco-products (last visited Feb 7, 2024).
[24] 21 CFR 1114.5.
[25] The PMTA must include information, such as, full reports of investigations of health risks, effect on the population as a whole, product formulation, statement of compliance and certification, and manufacturing. *See* 21 CFR § 1114.7(a).

> A PMTA must demonstrate the new tobacco product would be appropriate for the protection of the public health and takes into account the increased or decreased likelihood that existing users of tobacco products will stop using such products, as well as the increased or decreased likelihood that those who do not use tobacco products will start using such products.[26]

A SE Report can be submitted by the tobacco manufacturer to seek an FDA substantially equivalent order. The applicant must provide information on the new tobacco product's characteristics and compare its characteristics to another tobacco product.[27] The SE Report must contain information to allow the FDA to determine whether the new tobacco product is substantially equivalent to a tobacco product that was commercially marketed in the United States as of February 15, 2007.[28]

The FDA may exempt, from the requirements relating to the demonstration that a tobacco product is substantially equivalent, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive if certain conditions are met. A tobacco product may only receive an exemption from the requirement of showing a substantial equivalence (Ex Req) if it is for a minor modification to a tobacco product that can legally be sold as a legally marketed tobacco product.[29]

The FDA made determinations on more than 99 percent of the nearly 26 million products for which PMTSs have been submitted.[30] As of March 15, 2023, the FDA has authorized the marketing of 45 products, including 23 tobacco-flavored e-cigarette products and devices.[31]

However, the FDA tobacco premarket application process has been challenged. In 2022, the Eleventh Circuit Court of Appeals set aside FDA marketing order denials as arbitrary and capricious because the FDA failed to consider relevant factors in evaluating the applications submitted by the six tobacco companies.[32] In 2024, the Fifth Circuit Court of Appeals stated, in reference to the tobacco premarketing application process, that over several years, the FDA had "sent manufacturers of flavored e-cigarette products on a wild goose chase."[33]

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[26] *Supra* note 16.
[27] *See* 21 CFR 1107.16 and 21 CFR 1107.18.
[28] 21 CFR 1107.18.
[29] 21 CFR 1107.1.
[30] U.S. Food and Drug Administration, *FDA Makes Determinations on More than 99% of the 26 Million Tobacco*, www.fda.gov/tobacco-products/ctp-newsroom/fda-makes-determinations-more-99-26-million-tobacco-products-which-applications-were-submitted (last visited Feb 7, 2024); and U.S. Food and Drug Administration, *Premarket Tobacco Product Marketing Granted Orders*," updated as of Jan. 9, 2024, www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders (last visited Feb 7, 2024).
[31] *Id.*
[32] *See*, *Bidi Vapor LLC v. U.S. Food & Drug Admin*., 47 F.4th 1191, 1205 (11th Cir. 2022), in which the FDA issued marketing denial orders that specifically stated that it did not consider the marketing or sales-access-restriction plans in the PMTSs submitted by six tobacco companies which included their proposed marketing and sales-access restrictions in their applications.
[33] *Wages & White Lion Investments, L.L.C. v. Food & Drug Admin*., 90 F.4th 357 (5th Cir. 2024) (the court held that the FDA's denial of marketing orders was arbitrary and capricious because FDA failed to give manufacturers fair notice of the rules, did not explain or admit a change in position regarding application requirements, and disregarded the tobacco manufacturers' good faith reliance on previous FDA guidance).

III. Effect of Proposed Changes:

Definitions

Section 1 revises the meaning of the term "nicotine dispensing device" (NDD) in s. 569.31, F.S., to provide that "each individual stock keeping unit is considered a separate nicotine dispensing device."

The bill defines the following terms:

- "FDA" to mean the United States Food and Drug Administration.
- "Nicotine products manufacturer" to mean any person who manufactures nicotine products.
- "Sell" or "sale" to mean in addition to its common usage meaning, any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.
- "Timely filed premarket tobacco product application" to mean an application pursuant to 21 U.S.C. s. 387j for either:
  - A nicotine dispensing device containing or utilizing nicotine derived from tobacco marketed in the United States as of August 8, 2016, which was submitted to the U.S. Food and Drug Administration (FDA) on or before September 9, 2020, and accepted for filing; or
  - A nicotine dispensing device containing or utilizing nicotine derived from a non-tobacco source that is not a single use or disposable electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or other similar device and that does not use a sealed, prefilled, and disposable cartridge of nicotine in a solution.
- "Wholesale nicotine products dealer" to mean the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine products manufacturer.
- "Wholesale nicotine products dealer permit" to mean a permit issued by the division under s. 569.316, F.S, as created by the bill.

The definition for the term "timely filed premarket tobacco product application" is limited to NDDs required to file an application under 21 U.S.C. s. 387j., i.e., a new deemed tobacco product, and for which September 9, 2020, was the deadline for submitting a Premarket Tobacco Product Application (PMTA) application for new deemed tobacco products that were on the market as of August 8, 2016.[34] This term does not apply to tobacco products that are "preexisting tobacco products," i.e., tobacco products that were commercially marketed in the U.S. as of February 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. before February 15, 2007, that are not required to submit marketing applications to the FDA by May 14, 2022, and not required to receive a marketing order to permit the continued sale of the tobacco product.[35]

[34] *Supra* note 23.
[35] *Supra* note 21.

Nicotine Product Directory

Section 2 creates s. 569.311, F.S., to provide a certification requirement for nicotine product manufacturers.

Section 561.311(1), F.S., requires every nicotine product manufacturer who sells NDDs in Florida to execute and deliver a form, which s. 569.311(4), F.S., refers to as a "certification," prescribed by the Division of Alcoholic Beverages and Tobacco (division), under penalty of perjury for each NDD sold that meets either of the following criteria:

- The nicotine product manufacturer has submitted a timely filed PMTA for a NDD; and
  - the PMTA remains stayed by a court order, or the manufacturer has filed a timely request for supervisory review with the FDA which remains under review, or the order has been rescinded by the FDA or vacated by the court; or
- The nicotine products manufacturer has received a marketing granted order, such as the Substantial Equivalence (SE) or Exemption from Substantial Equivalence Request (EX REQ), for the NDD from the FDA.

Although the bill requires all NND's to be registered or "certified" with the division if they meet the specified criteria, the criteria for registration are limited to new deemed tobacco products under 21 U.S.C. s. 387j., which are required to submit a PMTA with the FDA. Registration requirements for pre-existing NDDs are not specified in the bill.

The form must be submitted to the division by December 1, 2024, and annually thereafter.

Section 569.311(2), F.S., requires each nicotine product manufacturer to set forth:

- The name under which the nicotine product manufacturer transacts or intends to transact business;
- The address of the location of the nicotine product manufacturer's principal place of business,
- The nicotine product manufacturer's e-mail address;
- The brand name of the nicotine dispensing device, the device's category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable), the device's name; and
- Any flavor utilized with the device that is sold in this state.

The bill provides that the division may allow a nicotine product manufacturer to group its nicotine dispensing devices on its certification.

Section 569.311(3), F.S., requires each nicotine product manufacturer to provide to the division a copy of:

- The cover page of the granted marketing order issued by the FDA for each device,
- The acceptance letter issued by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed premarket tobacco product application for each device; or
- A document issued by the FDA or by a court confirming that the premarket tobacco product application has been received and denied, but the order is not yet in effect for each device.

Section 569.311(4), F.S., requires a nicotine product manufacturer to notify the division within 30 days after any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

- A denial of market authorization as a preexisting or new tobacco product;
- A marketing order requiring a nicotine product manufacturer to remove a NDD from the market either temporarily or permanently;
- Any notice of action taken by the FDA affecting the ability of the NDD to be introduced or delivered in this state for commercial distribution;
- Any change in policy which results in a NDD no longer being an FDA enforcement priority; or
- Any other change deemed material by the division pursuant to a rule of the division.

Directory

Section 569.311(5), F.S., requires the division to develop and maintain a directory listing all the NDDs certified with the division which comply with the requirements discussed above. On January 1, 2025, the division must make the directory available on the DBPR website or the website of the division, and update the directory as necessary. The bill requires the division to establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

Process for Removal from the Directory

Section 569.311(6), F.S., requires the division to establish by rule a process to provide a nicotine product manufacturer a notice and an opportunity to cure deficiencies before removing the manufacturer or its NDD from the directory. The division may not remove the nicotine product manufacturer or its NDD from the directory until at least 30 days after the nicotine product manufacturer has been given notice of an intended action.

Notice is sufficient and deemed immediately received by a nicotine product manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine products manufacturer in its most recent certification filed.

Section 569.311(6)(b), F.S., provides that the nicotine product manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine product manufacturer or its NDD should be included in the directory.

Section 569.311(6)(c), F.S., provides that a determination by the division not to include or remove a nicotine product manufacturer or NDD on the directory is subject to review under ch. 120, F.S., the Florida Administrative Procedure Act. If a nicotine products manufacturer seeks review of the decision to remove it from the directory, the division must keep the NDD on the directory until entry of a final order.

Section 569.311(6)(d), F.S., provides that retailers and wholesalers have 30 days from when the product is removed from the directory to remove the product from their inventory and return the NDD to the nicotine product manufacturer.

Section 569.311(6)(d), F.S., also provides that a NDD identified in the notice of removal is considered contraband 30 days after its removal from the directory, and is subject to s. 569.345, F.S., relating to the seizure and destruction of contraband nicotine products.

Nicotine Products Not Listed on the Directory

Section 569.311(7), F.S., provides that, beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the DBPR's website, whichever is later, a nicotine products manufacturer who offers for sale a NDD not listed on the directory is subject to a fine of $1,000 per day for each NDD offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory. In addition, within 60 days from the date that the division first makes the directory available for inspection on its public website, each retailer and each nicotine product manufacturer must sell products that were in its inventory and not included on the directory or remove those products from inventory.

False Representation

Section 569.311(8), F.S., provides that a nicotine product manufacturer who falsely represents any of the information required to be provided to the division commits a felony of the third degree[36] for each false representation.

Unannounced Inspections

Section 569.311(9), F.S., provides that each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing compliance with the certification process and the directory. The division is required under the bill to conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after a violation. The bill requires the division to publish the results of all inspections at least annually and make the results available to the public on request.

Renew Certification

Section 569.311(10), F.S., authorizes the division to adopt by rule a procedure to allow nicotine product manufacturers to renew certifications without having to resubmit all the information for the certification process.

Enforcement

Section 569.311(11), F.S., provides that a nicotine product manufacturer's failure to provide required information or documents to the division may result in a NDD not being included on the directory or the removal of a NDD from the directory.

The bill authorizes the division to assess an administrative fine of up to $1,000 for each NDD offered for sale in Florida if a nicotine product manufacturer fails to provide notice to the division of a material change to its certification within 30 days after that material change. The

[36] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

bill requires the division to deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Maintenance and Inspection of Nicotine Product Records

Section 3 creates s. 569.312, F.S., to require nicotine product manufacturers who sell a NDD in Florida to maintain specified records.

Section 569.312(1), F.S., requires nicotine product manufacturers to keep for a period of three years, at the address listed on the certification:

- A complete and accurate record of the number of NDD sold or delivered to a wholesaler in Florida; and
- To whom each NDD was sold on a wholesale basis.

The records must include the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

Section 569.312(2), F.S., provides that retail nicotine product dealers, wholesale nicotine product dealers, wholesale dealers of cigarettes, and distributing agents of cigarettes must keep a record of the amount of each NDD received, delivered, or sold in Florida and to whom each NDD was sold or delivered or from whom they received each NDD, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. The records may be kept in electronic or paper format.

Section 569.312(3), F.S., provides that retail nicotine product dealers, wholesale nicotine product dealers, wholesale dealers of cigarettes, and distributing agents of cigarettes, who sell directly to consumers, are not required to keep and maintain these identifying records of the consumers who purchase or receive NDDs.

Section 569.312(4), F.S., requires nicotine product manufacturers that sell NDDs in Florida, including nicotine products manufacturers selling nicotine products directly to consumers, retail nicotine products dealers; wholesale nicotine products dealers, wholesale dealers of cigarettes, and distributing agents of cigarettes to provide these records within seven calendar days of receiving a request by the division.

Section 569.312(5), F.S., provides that the division is allowed to examine such records, issue subpoenas to persons or entities, administer oaths, and take depositions of witnesses within or outside of Florida.

Section 569.312(6), F.S., provides that the division may assess an administrative fine of up to $1,000 for each violation regarding maintenance and inspection of records. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Shipment of Unregistered Nicotine Products into Florida

Section 4 creates s. 569.313, F.S., to prohibit the unregistered shipment of NDDs into Florida.

Section 569.313(1), F.S., prohibits nicotine product manufacturers from distributing nicotine products in Florida for which the manufacturer has:

- Been ordered by the FDA to remove the product from the market either temporarily or permanently and the order has not been stayed;
- Not submitted a timely filed PMTA for a NDD;
- Had a timely filed PMTA not accepted by the FDA, denied by the FDA, or the FDA or a court has taken an action that negatively affects the ability of the product to be introduced or delivered into interstate commerce for commercial distribution in the United States; or
- Not submitted the certification required for any of the NDD intended for eventual retail sale to a consumer in Florida.

Section 569.313(2), F.S., provides that any person who knowingly ships and receives an unregistered NDD in violation of s. 569.313, F.S., commits a first degree misdemeanor.[37]

Section 569.313(3), F.S., authorizes the division to impose an administrative fine of up to $5,000 for each violation. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Wholesale Nicotine Products Dealers

Section 5 creates a wholesale nicotine products dealer permit which is issued by the division.

Section 561.316(1)(a), F.S., requires each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products that will be sold at retail within this state, or to sell nicotine products or NDDs to any retail nicotine products dealer who intends to sell nicotine products in Florida, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

Section 561.316(1)(b), F.S., specifies the identifying information that must be provided to the division on the application form, adopted by the rule of the division, for the permit. A permit is required for each place of business. The application must be signed and verified by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners; if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application. Written evidence of the authority to sign the application must be provided.

Section 561.316(2), F.S., sets forth the qualification for a wholesale nicotine products dealer permit. The permit may only be issued to a person who is 21 years of age or older or to a

[37] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

corporation whose officers are 21 years of age or older. In addition, a permit may not be issued to any to any person, firm, association, or corporation whose permit has been revoked by any jurisdiction; to any corporation an officer of which has had such permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation whose permit has been revoked by any jurisdiction.

Section 561.316(3), F.S., provides that, once issued, a wholesale nicotine products dealer permit is only valid for the person and place of business for which it was issued.

Section 561.316(4), F.S., exempts wholesale dealers of cigarettes and distributing agents of cigarettes from the requirement to have a wholesale nicotine products dealer permit for each place of business, but such persons must comply with the requirements in ch. 569, F.S. However, distributors of tobacco products other than cigarettes are not specifically exempted from the permit requirements, thus are required to have a wholesale nicotine products dealer permit for each place of business. However, it is not clear that such persons are subject to the records maintenance requirements in s. 569.312, F.S., which references the requirements as applicable to wholesale dealers and distributing agent of cigarettes, but does not reference the permittees under part II of ch. 210, F.S.

Wholesale Nicotine Products Dealer Permitholders

Section 6 creates s. 569.317, F.S., to provide that a wholesale nicotine products dealer permitholder may only purchase and sell for retail in Florida NDDs contained on the division's NDD directory. It authorizes the division to suspend or revoke the permit of a wholesale nicotine products dealer if the dealer fails to comply. The division may also impose an administrative fine up to $5,000 for each violation. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Retail Nicotine Products Dealer Permit

Section 7 amends s. 569.32, F.S., to provide that permits must be issued annually. The holder of a permit may renew each year. A dealer that does not timely renew must pay a $5 late fee for each month or portion of a month occurring after expiration and before renewal of the permit. The bill forbids the division from granting an exemption from the permit fees for any applicant.

The bill also requires the division to establish by rule a renewal procedure.

Section 569.32(2)(b), F.S., provides that the division may refuse to issue a retail nicotine products dealer permit if the person, including as an officer in a corporation, has had a permit revoked by another jurisdiction. Current law provides a basis for the division to deny an application for a prior revocation but not on the basis of a revocation by another jurisdiction.

Section 8 provides that the place or premises covered by a permit for a wholesale nicotine product dealer is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance

with requirements. Currently, this inspection and search provision only applies to retail nicotine products dealer permitholders.

Section 9 creates s. 569.34(4), F.S., to provide that on or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation in Florida to deal, at retail, in NDDs that are not listed on the division's NDD directory. Any person who knowingly ships or receives such NDDs in violation of this prohibition commits a misdemeanor of the second degree.[38]

Section 569.34(5), F.S., provides that on or after January 1, 2025, it is unlawful for a retail nicotine products dealer in Florida to purchase NDDs from a source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer of cigarettes, a distributing agent of cigarettes, or a tobacco products distributor of tobacco products other than cigarettes. The bill exempts from this prohibition nicotine product manufacturers who have a permit as a retail nicotine products dealer and sell their own products directly to consumers.

Under the bill, a person who knowingly ships or receives NDDs in violation of s. 569.34(5), F.S., prohibition commits a misdemeanor of the second degree.

Section 569.34(6), F.S., authorizes the division to suspend or revoke a retail nicotine products permit for a violation of part II of ch. 569, F.S., and to assess an administrative fine of up to $1,000 for each violation. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Seizure and Destruction of Contraband Nicotine Products

Section 10 creates s, 569.345, F.S., to provide that all NDDs sold, delivered, possessed, or distributed contrary to the provisions of ch. 569, F.S., are contraband and are subject to seizure and confiscation under the Florida Contraband Forfeiture Act.[39] The bill requires the court having jurisdiction to order the destruction and forfeiture of contraband NDDs.

Section 569.345(2), F.S., requires that the division keep a full and complete record of:
- The exact kinds, quantities, and forms of such nicotine products or nicotine dispensing devices;
- The persons from whom they were received and to whom they were delivered;
- By whose authority they were received, delivered, and destroyed; and
- The dates of the receipt, disposal, or destruction.

Under the bill, this record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

[38] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[39] Sections 932.701-932.7062, F.S., comprise the Florida Contraband Forfeiture Act, which provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.

Section 569.345(3), F.S., provides that the cost of seizure, confiscation, and destruction of contraband NDDs must be borne by the person from whom the contraband NDDs are seized.

Agent for Service of Process

Section 11 creates s. 569.346, F.S., to require non-resident manufacturers of NDDs to have a registered agent in Florida to accept service of process. The manufacturer must have such an agent for service of process in Florida in order to register a product with the division's NDD directory. The manufacturer must provide the name, address, telephone number, and proof of the appointment and availability of such agent to the division. The manufacturer must notify the division with 30 days of any change related to the agent, including notice to the division of any termination within five calendar days of an existing agency appointment with proof to the satisfaction of the division of the appointment of a new agent.

If an agent is not appointed by a manufacturer whose NDD is sold in Florida, the Secretary of State is deemed to be the agent. However, the appointment of the Secretary of State does not satisfy the condition precedent for inclusion or retention in the directory.

Conforming Provision

Section 12 amends s. 569.002, F.S., to conform a cross-reference changed in the bill.

Effective Date

Section 13 provides that the bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Manufacturers, distributers, and retail dealers of nicotine products will incur costs related to complying with the registration and permitting requirements in the bill. Additionally, retail dealers of nicotine products would have to pay a $5 dollar late renewal fee for nicotine products retail dealer permit.

C. Government Sector Impact:

The Division of Alcoholic Beverages and Tobacco (division) will incur costs in implementing, administering, and enforcing the requirements in the bill, including the creation of the nicotine products directory. According to the Department of Business and Professional Regulation (DBPR), the division estimates that it will need an additional nine positions with $562,497 of budget authority ($65,553 nonrecurring) to implement the bill.[40]

Modifications to DBPR's licensing system (Versa: Regulation) and online system (Versa: Online) related to creating and maintaining online accounts and changes to licensure processes, are required. The DBPR states these changes can be made using existing resources.[41]

The bill establishes new fines and penalties that the division may impose. The revenue generated from these penalties will vary each year depending on the number of violations enforced. Collected fines established in the bill are to be deposited into the General Revenue Fund. However, the division currently deposits fines and other revenues into the Alcoholic Beverage and Tobacco Trust Fund. These funds are used for the purposes of operating the division as requested by the DBPR in their legislative budget request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[40] See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 1006* (Dec. 20, 2023) (on file with the Senate Regulated Industries Committee). The analysis indicated a need of 16 FTE and $1,304,523 of budget authority ($111,378 nonrecurring) to implement the bill; however, an updated estimate was provided by the DBPR legislative affairs staff via a phone call on February 11, 2024.
[41] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 569.002, 569.31, 569.32, 569.33, and 569.34.

This bill creates the following sections of the Florida Statutes: 569.311, 569.312, 569.313, 569.316, 569.317, 569.345, and 569.346.

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 Appropriations Committee on Agriculture, Environment, and General Government on February 20, 2024:
The committee substitute:

- Revises the definition for the term "timely filed premarket product application" to include application under 21. U.S.C. s. 387j for a nicotine dispensing device (NDD) containing nicotine derived a non-tobacco source that is not a single use or disposable electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or other similar device and that does not use a sealed, prefilled, and disposable cartridge of nicotine in a solution.
- Provides that the division must keep the NDD on the directory until entry of a final order (instead of after the conclusion of an administrative hearing) following review under the APA.
- Prohibits the sale, shipment, or distribution of NDDs if the U.S. Food and Drug Administration (FDA) does not accept a premarket application, denies an application, or other FDA or court action negatively affects the ability of the product to be introduced or delivered into interstate commerce for commercial distribution in the United States.
- In s. 569.313(1)(B), F.S., removes the reference to a pending premarket tobacco application that has not been timely filed.
- Removes from the bill the requirement for the division to "establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and the permitting procedure for permits with the application and licensing system for alcoholic beverages."

CS by Regulated Industries on February 5, 2024:
The committee substitute:

- Changes the title from an act relating to nicotine products to an act relating to nicotine products and nicotine dispensing devices.
- Provides that each individual stock keeping unit is a considered a separate "nicotine dispensing device" (instead of a separate "nicotine product").
- Defines the terms "sell," "sale," and "timely filed premarket tobacco product application."
- Amends the requirements for the directory in s. 569.311, F.S., to apply to nicotine dispensing devices (NDDs) instead of nicotine products, requires manufacturers and

retailers of NDDs to submit the required form by December 1, 2024, and annually thereafter, and revises the criteria for the types of products that must be registered, including deleting products derived from a non-tobacco source.

- Requires additional information be include in the registration application to include brand name of the NDD, the device's category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable), the device's name, and flavor utilized with the device.
- Requires the Division of Alcoholic Beverages and Tobacco (division) to establish a process to provide retailers, distributors, and wholesalers' notice of the initial publication of the directory and changes made to the directory in the prior month.
- Prohibits retailers from selling or having in inventory the products that have been removed from the directory 30 days after (instead of 21 days after) such removal.
- Requires retailers and distributors, within 60 days after the initial posting of the directory, to sell or remove from inventory the products that are not included in the directory.
- Provides an administrative fine of up to $1,000 for each NDD offered for sale in Florida if a NDD manufacturer fails to provide notice to the division of a material change to its certification within 30 days after that material change.
- Requires permitholders to respond to a records request from the division with 7 calendar days of a request (instead of upon a request).
- Disqualifies persons, including officers of a corporation, for a wholesale nicotine products dealer permit and a retail nicotine products dealer permit if a permit has been revoked in any jurisdiction.
- Requires non-resident manufacturers of NDDs sold in Florida to have a registered agent in Florida to accept service of process.

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 Appropriations Committee on Agriculture, Environment, and General Government; the Committee on Regulated Industries; and Senator Perry

601-03516-24 20241006c2

A bill to be entitled

An act relating to nicotine products and dispensing devices; reordering and amending s. 569.31, F.S.; revising and defining terms for purposes of part II of ch. 569, F.S.; creating s. 569.311, F.S.; requiring nicotine product manufacturers who sell nicotine dispensing products in this state to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each dispensing device sold within this state which meets certain criteria; specifying requirements for the form prescribed by the division; requiring nicotine product manufacturers to submit certain additional materials when submitting the form to the division; requiring a manufacturer to notify the division of certain events; requiring the division to develop and maintain a directory listing certified nicotine product manufacturers and certified nicotine dispensing devices by a specified date; specifying requirements for the directory; requiring the division to establish rules to provide notice to a nicotine product manufacturer before removal of the manufacturer or any of its nicotine dispensing devices from the directory; providing for administrative review of action by the division regarding the directory; providing penalties for certain violations by manufacturers; subjecting retail and wholesale nicotine products dealers to inspections or audits to

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ensure compliance; requiring the division to publish findings of such inspections and audits and make them available to the public; authorizing the division to adopt certain procedures by rule; authorizing the division to take certain actions against nicotine product manufacturers who fail to provide certain documents or information; requiring all fines to be deposited into the General Revenue Fund; creating s. 569.312, F.S.; requiring specified manufacturers and dealers of nicotine dispensing devices to maintain certain records for a specified timeframe; requiring such manufacturers and dealers to timely comply with division requests to produce records; authorizing the division to examine such records for specified purposes; providing for enforcement; authorizing the division to assess administrative fines for noncompliance and requiring all fines to be deposited into the General Revenue Fund; creating s. 569.313, F.S.; prohibiting the sale, shipment, or distributing of certain nicotine dispensing devices from being sold for retail sale in this state; providing a criminal penalty; authorizing the division to assess fines and requiring all fines to be deposited into the General Revenue Fund; creating s. 569.316, F.S.; requiring persons or entities that seek to deal or sell certain nicotine products to retail dealers to obtain a wholesale nicotine products dealer permit; specifying requirements and limitations regarding the issuance of such permits; specifying conditions under which the

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division may refuse to issue a permit; providing requirements and limitations for permitholders; providing that a wholesale dealer or a distributing agent does not need separate or additional wholesale nicotine products permits in this state; creating s. 569.317, F.S.; requiring wholesale nicotine products dealer permitholders to purchase and sell for retail sale only nicotine dispensing devices listed in the division's directory; authorizing the division to suspend or revoke a permit if a violation is deemed to have occurred; authorizing the division to assess administrative penalties for violations and requiring all fines to be deposited into the General Revenue Fund; amending s. 569.32, F.S.; requiring that retail nicotine products dealer permits be issued annually; providing procedures for the renewal of permits; requiring the division to levy a delinquent fee under certain circumstances; requiring the division to adopt by rule a certain procedure for the submittal of applications; prohibiting the division from granting exemptions from permit fees; making technical changes; amending s. 569.33, F.S.; providing that holders of a wholesale nicotine products dealer permit must consent to certain inspections and searches without a warrant; amending s. 569.34, F.S.; providing criminal penalties for the unlawful sale or dealing of unlisted nicotine dispensing devices; providing criminal penalties for the unauthorized purchase of certain nicotine dispensing devices; authorizing the division to

suspend or revoke a permit of a permitholder upon sufficient cause of a violation of part II of ch. 569, F.S.; authorizing the division to assess an administrative penalty for violations and requiring all fines to be deposited into the General Revenue Fund; making technical changes; creating s. 569.345, F.S.; providing for the seizure and destruction of unlawful nicotine dispensing devices in accordance with the Florida Contraband Forfeiture Act; requiring a court with jurisdiction to take certain action; requiring the division to maintain certain records; requiring that costs be borne by the person who held the seized products; creating s. 569.346, F.S.; requiring certain manufacturers of nicotine dispensing devices to appoint an agent for certain purposes; requiring such manufacturers to provide certain notice; appointing the Secretary of State as the agent to manufacturers who have not appointed an agent; amending s. 569.002, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 569.31, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Dealer" is synonymous with the term "retail nicotine products dealer."

(3) ~~(2)~~ "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(4) "FDA" means the United States Food and Drug Administration.

(5) ~~(3)~~ "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product. For purposes of this definition, each individual stock keeping unit is considered a separate nicotine dispensing device.

(6) ~~(4)~~ "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(7) "Nicotine product manufacturer" means any person that manufactures nicotine products.

(8) ~~(5)~~ "Permit" is synonymous with the term "retail nicotine products dealer permit."

(9) ~~(6)~~ "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(10) ~~(7)~~ "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(11) ~~(8)~~ "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(12) "Sell" or "sale" means in addition to its common usage meaning, any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.

(13) "Timely filed premarket tobacco product application" means either:

(a) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from tobacco marketed in the United States as of August 8, 2016, which was submitted to the FDA on or before September 9, 2020, and accepted for filing; or

(b) An application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing or utilizing nicotine derived from a non-tobacco source that is not a single use or disposable electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, or other similar device and that does not use a sealed, prefilled, and disposable

cartridge of nicotine in a solution.

(14) "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine product manufacturer.

(15) "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

(1) ~~(9)~~ "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 2. Section 569.311, Florida Statutes, is created to read:

569.311 Nicotine dispensing device directory.—

(1) By December 1, 2024, and annually thereafter, every nicotine product manufacturer that sells nicotine dispensing devices to any person for eventual retail sale in this state shall execute and deliver a form, prescribed by the division, under penalty of perjury for each such nicotine dispensing device sold that meets either of the following criteria:

(a) The manufacturer of a nicotine dispensing device has submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j and remains stayed by a court order, or the manufacturer has filed a timely request for supervisory review with the FDA which remains under review, or the order has been rescinded by the FDA or vacated by a court; or

(b) The nicotine product manufacturer has received a

marketing granted order under 21 U.S.C. s. 387j for the nicotine dispensing device from the FDA.

(2) The form prescribed by the division pursuant to subsection (1) must require each nicotine product manufacturer to set forth the name under which the nicotine product manufacturer transacts or intends to transact business, the address of the location of the nicotine product manufacturer's principal place of business, the nicotine product manufacturer's e-mail address, and the brand name of the nicotine dispensing device, the device's category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable), the device's name, and any flavor utilized with the device that is sold in this state. The division may allow a nicotine product manufacturer to group its nicotine dispensing devices on its certification.

(3) In addition to completing the form prescribed by the division pursuant to subsection (1), each nicotine product manufacturer shall provide a copy of the cover page of the granted marketing order issued by the FDA pursuant to 21 U.S.C. s. 387j for each device; a copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed premarket tobacco product application for each device; or a document issued by the FDA or by a court confirming that the premarket tobacco product application has been received and denied, but the order is not yet in effect for each device.

(4) Any nicotine product manufacturer submitting a certification pursuant to subsection (1) shall notify the division within 30 days after any material change to the certification, including, but not limited to, issuance by the

FDA of any of the following:

(a) A denial of a market authorization pursuant to 21 U.S.C. s. 387j;

(b) An order requiring a nicotine product manufacturer to remove a nicotine dispensing device or nicotine product from the market either temporarily or permanently;

(c) Any notice of action taken by the FDA affecting the ability of the nicotine dispensing device to be introduced or delivered in this state for commercial distribution;

(d) Any change in policy which results in a nicotine dispensing device becoming an FDA enforcement priority; or

(e) Any other change deemed material by the division pursuant to a rule of the division.

(5) The division shall develop and maintain a directory listing all nicotine product manufacturers that sell nicotine dispensing devices in this state and the nicotine dispensing devices certified by those manufacturers with the division which comply with this section. The division shall make the directory available January 1, 2025, on its or the Department of Business and Professional Regulation's website. The division shall update the directory as necessary. The division shall establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

(6) The division shall establish by rule a process to provide a nicotine product manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or any of its nicotine dispensing devices from the directory.

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(a) The division may not remove the nicotine product manufacturer or any of its nicotine dispensing devices from the directory until at least 30 days after the nicotine product manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine product manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine product manufacturer in its most recent certification filed under subsection (1).

(b) The nicotine product manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine product manufacturer or any of its nicotine dispensing devices must be included on the directory.

(c) A determination by the division not to include or to remove a nicotine product manufacturer or nicotine dispensing device from the directory is subject to review under chapter 120. If a nicotine product manufacturer seeks review of removal from the directory, the division must keep the nicotine dispensing device on the directory until entry of a final order.

(d) If a nicotine dispensing device is removed from the directory, each retailer and each wholesaler holding nicotine dispensing devices for eventual sale to a consumer in this state has 30 days from the day such product is removed from the directory to sell the product or remove the product from its inventory. After 30 days following removal from the directory, the product identified in the notice of removal is contraband and subject to s. 569.345.

(7)(a) Except as provided in subsections (b) and (c),

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beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the Department of Business and Professional Regulation's website, whichever is later, a nicotine product manufacturer that offers for sale in this state a nicotine dispensing device not listed on the directory is subject to a fine of $1,000 per day for each individual nicotine dispensing device offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

(b) Each retailer shall have 60 days from the date that the division first makes the directory available for inspection on its public website to sell products that were in its inventory and not included on the directory or remove those products from inventory.

(c) Each distributor or wholesaler shall have 60 days from the date that the division first makes the directory available for inspection on its public website to remove from inventory those products intended for eventual retail sale to a consumer in this state.

(8) A nicotine product manufacturer that falsely represents any of the information required by subsection (1) or subsection (2) commits a felony of the third degree for each false representation, punishable as provided in s. 775.082 or s. 775.083.

(9) Each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing this section. The division shall conduct unannounced follow-up

compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after any violation of this section. The division shall publish the results of all inspections or audits at least annually and shall make the results available to the public on request.

(10) The division may establish by rule a procedure to allow nicotine product manufacturers to renew certifications without having to resubmit all the information required by this section.

(11) The failure of a nicotine product manufacturer to provide information or documents required by this section may result in a nicotine dispensing device not being included on the directory or the removal of a nicotine dispensing device from the directory. The division may assess an administrative fine of up to $1,000 for each nicotine dispensing device offered for sale in this state if a nicotine product manufacturer fails to provide notice to the division of a material change to its certification within 30 days after that material change. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 3. Section 569.312, Florida Statutes, is created to read:

569.312 Maintenance and inspection of nicotine dispensing device records.—

(1) Each nicotine product manufacturer that sells nicotine dispensing devices in this state shall maintain and keep for a period of 3 years, at the address listed on the certification required pursuant to s. 569.311, a complete and accurate record

of the number of nicotine dispensing devices sold or delivered to a wholesaler in this state and to which each nicotine dispensing device was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

(2) Each retail nicotine products dealer; wholesale nicotine product dealer; wholesale dealer, as defined in s. 210.01(6); and distributing agent, as defined in s. 210.01(14), shall maintain and keep for a period of 3 years at its principal place of business a complete and accurate record of the quantity of each nicotine dispensing device received, delivered, or sold in this state and to which each nicotine dispensing device was sold or delivered or from which the business received each nicotine dispensing device, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. Such records may be kept in an electronic or paper format.

(3) Nicotine product manufacturers that sell nicotine dispensing devices in this state; retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, as defined in s. 210.01(6); and distributing agents, as defined in s. 210.01(14), who sell or deliver nicotine dispensing devices directly to consumers are not required to keep and maintain the name, address, e-mail address, and telephone number of consumers who purchase or receive nicotine dispensing devices.

(4) Within 7 calendar days after receiving a request by the division, a nicotine product manufacturer that sells nicotine dispensing devices in this state, including a manufacturer selling nicotine dispensing devices directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, as defined in s. 210.01(6); and a distributing agent, as defined in s. 210.01(14), shall provide to the division or its duly authorized representative copies of records related to the nicotine dispensing devices received, delivered, or sold in this state and to which those nicotine dispensing devices were sold or delivered or from which they were received.

(5) The division, or a designated employee thereof, may examine the records required to be maintained by each nicotine product manufacturer, retail nicotine products dealer, wholesale nicotine products dealer, wholesale dealer, as defined in s. 210.01(6), and distributing agent, as defined in s. 210.01(14); issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of this state. The civil law of this state regarding enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of this state in civil cases applies to a subpoena issued by the division, or any designated employee thereof. The subpoena may be enforced by writ of attachment issued by the division, or any designated employee, for such witness to compel him or her to appear before the division, or any designated employee, and give his or her testimony and to bring and produce such records as may be required for examination. The division, or any designated

employee, may bring an action against a witness who refuses to appear or give testimony by citation before the circuit court, which shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(6) The division may assess an administrative fine of up to $1,000 for each violation of this section. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 4. Section 569.313, Florida Statutes, is created to read:

569.313 Shipment of unregistered nicotine dispensing devices sold for retail sale in this state.—

(1) A nicotine product manufacturer may not sell, ship, or otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state for which:

(a) The FDA has entered an order requiring the nicotine product manufacturer to remove the product from the market either temporarily or permanently, which order has not been stayed by the FDA or a court of competent jurisdiction;

(b) The nicotine product manufacturer has not submitted a timely filed premarket tobacco product application for the nicotine dispensing device;

(c) The nicotine product manufacturer's timely filed premarket tobacco product application for the nicotine dispensing device is no longer pending because it was not

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accepted by the FDA, it was denied by the FDA, or it is subject to any other order or action by the FDA or any court that negatively affects the ability of the product to be introduced or delivered into interstate commerce for commercial distribution in the United States; or

(d) The nicotine product manufacturer has not submitted the certification required under this chapter for any of the nicotine dispensing devices intended for eventual retail sale to a consumer in this state.

(2) Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 5. Section 569.316, Florida Statutes, is created to read:

569.316 Wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products that will be sold at retail within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer who intends to sell those nicotine products in this state, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine

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products are sold.

(b) Application for a wholesale nicotine products dealer permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business, the applicant's e-mail address, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names, e-mail addresses, and addresses of the persons constituting the firm or association. If the applicant is a corporation, the application must set forth the names, e-mail addresses, and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Wholesale nicotine products dealer permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a wholesale nicotine

products dealer permit to any person, firm, association, or corporation whose permit has been revoked by any jurisdiction; to any corporation an officer of which has had such permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation whose permit has been revoked by any jurisdiction. The division must revoke any wholesale nicotine products dealer permit issued to a firm, an association, or a corporation prohibited from obtaining such permit under this chapter.

(3) Upon approval of an application for a wholesale nicotine products dealer permit, the division shall issue to the applicant a wholesale nicotine products dealer permit for the place of business or premises specified in the application. A wholesale nicotine products dealer permit is not assignable and is valid only for the person in whose name the wholesale nicotine products dealer permit is issued and for the place designated in the wholesale nicotine products dealer permit. The wholesale nicotine products dealer permit must be conspicuously displayed at all times at the place for which it is issued.

(4) A wholesale dealer, as defined in s. 210.01(6), or a distributing agent, as defined in s. 210.01(14), is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine dispensing devices within this state. A wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5), which deals, at wholesale, in nicotine dispensing devices is subject to, and must be in compliance with, this chapter.

Section 6. Section 569.317, Florida Statutes, is created to

read:

569.317 Wholesale nicotine products dealer permitholder; administrative penalties.—A wholesale nicotine products dealer permitholder may only purchase and sell for retail sale in this state nicotine dispensing devices contained on the directory created by the division pursuant to s. 569.311. The division may suspend or revoke the wholesale nicotine products dealer permit of a wholesale nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a wholesale nicotine products dealer permitholder or its agent or employee. The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a wholesale nicotine products dealer permitholder, conditioned upon compliance with terms the division considers appropriate.

Section 7. Section 569.32, Florida Statutes, is amended to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products or nicotine dispensing devices within this ~~the~~ state, or to allow a nicotine products vending machine to be located on its premises in this ~~the~~ state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products or nicotine dispensing devices are sold. Each dealer

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owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products or nicotine dispensing devices are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within this ~~the~~ state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices within this ~~the~~ state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to

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sign the application, together with the written evidence of this authority.

(c) Permits must be issued annually.

(d) The holder of a permit may renew the permit each year. A dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The division shall establish by rule a renewal procedure.

(e) The division may not grant an exemption from the permit fees prescribed in this subsection for any applicant.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked by any jurisdiction; to any corporation an officer of which has had his or her permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation the permit of which has been revoked by any jurisdiction. Any permit issued to a firm, an association, or a corporation prohibited from obtaining a permit under this chapter must ~~shall~~ be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit must ~~shall~~ be conspicuously displayed at all times at the place for which issued.

Section 8. Section 569.33, Florida Statutes, is amended to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit or a wholesale nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 9. Section 569.34, Florida Statutes, is amended to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this subsection ~~section~~ commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within this ~~the~~ state, or allow a nicotine products vending machine to be located on its premises in this ~~the~~ state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in this ~~the~~ state,

is subject to, and must be in compliance with, this part.

(3) Any person who violates subsection (1) must ~~this section shall~~ be cited for such infraction and must ~~shall~~ be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for a violation of subsection (1) ~~for an infraction under this section~~ may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit

court.

(4) On or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation in this state to deal, at retail, in nicotine dispensing devices that are not listed on the directory created pursuant to s. 569.311. Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) On or after January 1, 2025, it is unlawful for a retail nicotine products dealer in this state, other than a nicotine product manufacturer that also is permitted as a retail nicotine products dealer in this state and is selling its own products directly to consumers, to buy nicotine dispensing devices from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5). Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The division may suspend or revoke the permit of a retail nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a retail nicotine products dealer permitholder, or its agent or employee. The division may also assess an administrative fine of up to $1,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of

the order.

Section 10. Section 569.345, Florida Statutes, is created to read:

569.345 Seizure and destruction of contraband nicotine dispensing devices.—All nicotine dispensing devices sold, delivered, possessed, or distributed contrary to any provision of this chapter are declared to be contraband, are subject to seizure and confiscation under the Florida Contraband Forfeiture Act by any person whose duty it is to enforce the provisions of this chapter, and must be disposed of as follows:

(1) A court having jurisdiction shall order such nicotine dispensing devices forfeited and destroyed. A record of the place where such nicotine dispensing devices were seized, the kinds and quantities of nicotine dispensing devices destroyed, and the time, place, and manner of destruction must be kept, and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

(2) The division shall keep a full and complete record of all nicotine dispensing devices showing:

(a) The exact kinds, quantities, and forms of such nicotine dispensing devices;

(b) The persons from whom they were received and to whom they were delivered;

(c) By whose authority they were received, delivered, and destroyed; and

(d) The dates of the receipt, disposal, or destruction, which record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

(3) The cost of seizure, confiscation, and destruction of

contraband nicotine dispensing devices is borne by the person from whom such products are seized.

Section 11. Section 569.346, Florida Statutes, is created to read:

569.346 Agent for service of process.—

(1) Any nonresident manufacturer of nicotine dispensing devices that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to being included on the directory created in this chapter, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the division.

(2) The manufacturer shall provide notice to the division 30 calendar days before termination of the authority of an agent and shall further provide proof to the satisfaction of the division of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer shall notify the division of the termination within 5 calendar days and shall include proof to the satisfaction of the division of the appointment of a new agent.

(3) Any manufacturer whose nicotine dispensing devices are

sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this subsection to be included or retained on the directory.

Section 12. Subsections (3) and (4) of section 569.002, Florida Statutes, are amended to read:

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

(3) "Nicotine product" has the same meaning as provided in s. 569.31 ~~s. 569.31(4)~~.

(4) "Nicotine dispensing device" has the same meaning as provided in s. 569.31 ~~s. 569.31(3)~~.

Section 13. This act shall take effect October 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

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2-27-24
Meeting Date

Physical policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Muhannad Jubran

Phone 305-849-1424

Address 870-1 Blountstown St
Street

Email parkwayeast7981@Gmail

Tallahassee FL 32304
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ ~~Against~~

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

FISCAL Policy
Committee

1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name LORENA HOLLEY

Phone 850-443-1173

Address 227 S. Adams
Street

Email lorena@FRF.org

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: FLORIDA ~~RETAIL~~ RETAIL Federation

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24	SB 1006
Meeting Date	Bill Number or Topic
Fiscal Policy	
Committee	Amendment Barcode (if applicable)

Name David Shepp Phone 863 581-4250

Address 123 S. Adams Street Email shepp@thesouthernagroup.com
Street

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Petroleum Marketers Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2-27-2024
Meeting Date

Senate Fiscal Policy
Committee

SB 1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jacqueline Carco

Phone (850) 324-4722

Address 5700 Tarpon Ct
Street

Email luv2doodles@gmail.com

Milton FL 32583
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Guard

Phone 850-544-8303

Address PL-01, The Capitol
Street

Email john.guard@myfloridalegal.com

Tallahassee FL 32399
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
The Attorney General

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Meeting Date		1006
		Bill Number or Topic
Committee		Amendment Barcode (if applicable)

Name Jowalton Gonzalez Phone

Address 4126 NW 88th Ave Coral Springs Email
Street

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02-27-2024
Meeting Date

Fiscal Policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name NIck Orlando

Phone 727-400-4740

Address 2655 East Bay Dr
Street

Email nick@flsmokefree.org

Largo *City* | Florida *State* | 33771 *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2-27-24
Meeting Date

Fiscal Policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ernesto Fragoso

Phone 904-518-0709

Address 14187 Duval Rd.
Street

Email ernesto.nsv.co

Jacksonville FL 32218
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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27 Feb, 2024
Meeting Date

SB 1006
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Aymn Faggoush

Phone 727-657-7644

Address 7050 Grand Blvd
Street

Email t4eayman@yahoo.com

New Port Richey, FL 34652
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/2024
Meeting Date

Fiscal
Committee

SB 1006 - 1007
Bill Number or Topic

Amendment Barcode (if applicable)

Name Baha Kasem

Phone 901-647-4322

Address 3142 Baringer Hill
Street

Email BahaKasem@gmail.com

Tallahassee FL 32311
City State Zip

Speaking: ☐ For ☑ ~~Against~~ ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2.27.24
Meeting Date

Fiscal Policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Angela Weatherholt

Phone 407 878 7397

Address 1340 W. Intl Spdwy Blvd.
Street

Email angela_vaparandco@aol

Daytona 32114
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

SB1006
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Shaun Province

Phone 951-285-3355

Address 4205 Grant Blvd
Street

Email

Orlando FL 32804
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/21
Meeting Date

Fiscal Policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Houston Blackwell

Phone 813-508-0898

Address 2257 Springwood Circle W
Street

Email

Clearwater FL 33763
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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02/27/2024
Meeting Date

Fiscal Policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Gary Ellasen-Hodes

Phone 786-333-8221

Address 1416 W tennessee st ste #3
Street

Email Cloud.smokeshop11@gmail.com

tallahassee FL 32304
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2-27-24
Meeting Date

Fiscal Policy
Committee

SB 1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jean O'Shaughnessy Phone

Address 2315 Foxtree Rd Email
Street

Tavares FL 32778
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

DUPLICATE

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/2024
Meeting Date

Fiscal
Committee

HB 1006 - 1007
Bill Number or Topic

Amendment Barcode (if applicable)

Name Baha Kasem

Phone 901-647-4322

Address 3142 Baringer Hill
Street

Email Baha.kasem@gmail.com

Tallchassee FL 32311
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

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2-27-24
Meeting Date

Fiscal Policy
Committee

SB 1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nikki Marenghi

Phone 386 748 0833

Address 331 Circle Dr
Street

Email

DeLand FL 32724
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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2/27/2024
Meeting Date

Fiscal Policy
Committee

SB 1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name DAN MARLIN

Phone 904-572-9001

Address 2004 South Orange Ave
Street

Email DAN@JohnnyCopper.org

Green Cove Springs, Fl 32043
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/2024
Meeting Date

Fiscal Policy
Committee

SB 1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Joseph A Carco

Phone 850-292-5330

Address 314-B S. Navy Blvd
Street

Email midnightjoe01@gmail.com

Pensacola FL 32507
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/2024
Meeting Date

Senate Fiscal Policy
Committee

SB 1004
Bill Number or Topic

Amendment Barcode (if applicable)

Name Lindsey Stroud

Phone 727 | 354-8170

Address 417 Cooper St.
Street

Crestview FL 32539
City State Zip

Email lindsey@protectingtaxpayers.org

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: Taxpayers Protection Alliance

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2-27-2004
Meeting Date

SB 1006
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Trevor Campbell

Phone 813-727-5779

Address 7000 Talamore dr
Street

Email FogworksSales@Gmail.com

wesley chapel FL 33545
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jonathan Risteen

Phone 386 957 3693

Address 2980 S Ridgewood Ave
Street

Email jristeen@gmail.com

Edgewater FL 32141
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

SB1006
Bill Number or Topic

Amendment Barcode (if applicable)

Name Amanda Risteen

Phone 386-290-4227

Address 2980 S. Ridgewood Ave
Street

Email amanda.risteen@gmail.com

Edgewater, FL 32141
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1036
INTRODUCER:	Fiscal Policy Committee; Criminal Justice Committee; and Senator Ingoglia
SUBJECT:	Reclassification of Criminal Penalties
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Fav/CS**
2.	Atchley	Harkness	ACJ	**Favorable**
3.	Cellon	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1036 creates s. 775.0848, F.S., reclassifying felony offenses to the next higher level in cases when:

- A person has been previously convicted of a crime relating to the reentry to the United States pursuant to 8 U.S.C. s. 1326; and
- That person commits a felony offense after the federal conviction.

The bill also creates s. 908.12, F.S., providing similar reclassifications of criminal offenses when a defendant is convicted of committing a misdemeanor or felony for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

"Transnational crime organization" is defined as an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

The bill may have a positive insignificant fiscal impact on the Department of Corrections due to an increase in prison beds. See Section V. Fiscal Impact Statement.

The bill becomes effective October 1, 2024.

II. Present Situation:

Recently, the Statewide Grand Jury recommended increases in criminal sentences for:

- Aliens who have been removed from the State, unlawfully reentered, and subsequently committed a new criminal offense;[1] and
- Persons who are proven to be a member of a transnational crime organization and who have committed a related felony offense.[2]

Federal Law-Unlawful Reentry

Reentry to the United States by aliens[3] who have been removed from the U.S. is addressed in 8 U.S.C.A. 1326 as follows:

- Any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
  - Enters, attempts to enter, or is at any time found in, the United States...shall be fined under Title 18, or imprisoned not more than 2 years, or both.
- Any alien whose removal was subsequent to a conviction for the commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony[4]), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both.
- Any alien whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

The term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.[5] The U.S. Department of Homeland Security reports that in Fiscal Year 2022, 79,395 convicted criminals were removed from the United States.[6]

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[1] Generally, under federal law any alien who has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter enters, attempts to enter, or is at any time found in, the United States, shall be fined or imprisoned, or both. 8 U.S.C.A. s. 1326.

[2] Case No. SC 22-796, Florida Supreme Court, Fifth Presentment of the Twenty-First Statewide Grand Jury, November 17, 2023.

[3] The term "alien" means any person not a citizen or national of the United States. 8 U.S.C.A. 1101(a)(3).

[4] "Aggravated felony" is defined in 8 U.S.C.A. 1101(a)(43)(A)-(U). The term applies to a felony offense, whether in violation of Federal or State law, and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. 8 U.S.C.A.1101(a).

[5] 8 U.S.C.A. 1326(b).

[6] *2022 Yearbook of Immigration Statistics*, U.S. Department of Homeland Security, Office of Homeland Security Statistics, 2023, available at https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf (last visited January 21, 2024).

Transnational Crime Organization

A "transnational crime organization" has been defined as an organization that routinely facilitates the international trafficking of drugs, humans, or weapons, or the international smuggling of humans.[7]

These organizations make money by smuggling humans from place to place, often across the borders of other countries. It can be a lucrative business. For example, a 2010 report by the United Nations Office on Drug Crime estimated that the smuggling of persons from Latin America to the United States generated approximately $6.6 billion annually in illicit proceeds for human smuggling networks.[8] A report by the Homeland Security Operational Analysis Center[9] estimates that the smuggling of unlawful migrants from Guatemala, Honduras, and El Salvador generated between $200 million and $2.3 billion for human smugglers in 2017, however a lack of reliable data contributes to substantial uncertainty in both estimates.[10]

The U.S. Department of Homeland Security (DHS) reports:

- U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations referred information in dozens of cases to Homeland Security Investigations (HSI), resulting in the arrest of human traffickers and identification of trafficking victims. HSI initiated 1,373 criminal investigations related to sex trafficking and forced labor, leading to 3,655 arrests and 638 convictions.[11]
- In December, 2023, following an investigation by HSI, the Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned the Malas Mañas transnational criminal organization, a human smuggling and narcotics trafficking organization based in Sonora, Mexico, along with two individuals in its support network.[12]
- In August, 2023, the DHS and its federal partners, including the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), announced the results of increased enforcement efforts to stem the trafficking of firearms from the United States into Mexico for use by transnational

[7] Although, as the Statewide Grand Jury presentment explains, these organizations may also be involved in financial crimes, firearm and weapon smuggling, and a diverse list of criminal activity. Case No. SC 22-796, Florida Supreme Court, Fifth Presentment of the Twenty-First Statewide Grand Jury, November 17, 2023. *See also* Another "Se Busca Información" criminal target arrested; U.S. Customs and Border Protection, *News Release*, January 2, 2024, available at https://www.cbp.gov/newsroom/local-media-release/another-se-busca-informaci-n-criminal-target-arrested (last visited January 17, 2024).

[8] The United Nations Office on Drugs and Crime, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* available at https://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf (last visited January 13, 2024).

[9] Operated by the RAND Corporation on behalf of the U.S. Department of Homeland Security.

[10] RAND Corporation News Release, *Human Smuggling Via Central America Generates Hundreds of Millions of Dollars, but Transnational Criminal Groups May Not Be Main Culprits,* April 22, 2019, available at https://www.rand.org/news/press/2019/04/22.html (last visited January 17, 2024).

[11] U.S. Department of Homeland Security, *DHS Center for Countering Human Trafficking Releases FY 2022 Annual Report*, January 31, 2023, available at https://www.dhs.gov/news/2023/01/31/dhs-center-countering-human-trafficking-releases-fy-2022-annual-report (last visited January 19, 2024).

[12] U.S. Department of Homeland Security, *Following DHS Investigation, Treasury Sanctions Human Smuggling and Drug Trafficking Organization Operating on Southwest Border*, Press Release, December 14, 2023, available at https://www.dhs.gov/news/2023/12/14/following-dhs-investigation-treasury-sanctions-human-smuggling-and-drug-trafficking (last visited January 20, 2024).

criminal organizations.[13] The DHS has seized over twice as many firearms in Fiscal Year 2023 than it did in Fiscal Year 2022.[14]

Reclassification of Criminal Offenses and Enhancement of Penalties

Reclassification occurs when the Legislature *increases the degree of a conviction*. The reclassification attaches at the time the charges are filed.[15] Reclassification of a criminal conviction from one degree to a higher degree stems from an express and explicit grant of statutory authority.[16]

An example of a reclassification statute is s. 775.0863, F.S., Evidencing prejudice while committing offense against person with mental or physical disability; reclassification. The statute states in part:

- The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based on a mental or physical disability of the victim:
  - A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.[17]
  - A misdemeanor of the first degree is reclassified to a felony of the third degree.[18]
  - A felony of the third degree is reclassified to a felony of the second degree.[19]
  - A felony of the second degree is reclassified to a felony of the first degree.[20]
  - A felony of the first degree is reclassified to a life felony.[21]

Penalty enhancements refer to the authority of a judge to impose a *more severe sentence* for a convicted offense when certain factual findings are made.[22]

[13] U.S. Department of Homeland Security, Press Release, September 1, 2023, *DHS Announces Results of Coordinated Enforcement to Interdict Southbound Firearms "Operation Without a Trace,"* available at https://www.dhs.gov/news/2023/09/01/dhs-announces-results-coordinated-enforcement-interdict-southbound-firearms (last visited January 20, 2024).
[14] *Id*.
[15] *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).
[16] *Cf. Spicer v. State*, 615 So.2d 725, 726 (Fla. 2d DCA 1993) (reversing reclassification of robbery with a mask conviction because "[p]enal statutes must be construed in terms of their literal meaning .... [I]f the legislature had intended section 775.0845 [Florida Statutes (1989)] to reclassify offenses, it would have so stated ....").
[17] A second degree misdemeanor in punishable by up to 60 days in the county jail and a $500 fine. A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. (Sections 775.082 and 775.083, F.S.).
[18] A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. (Sections 775.082 and 775.083, F.S.).
[19] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. (Sections 775.082 and 775.083, F.S.).
[20] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. A first degree felony is punishable by up to 30 years to life imprisonment and a $10,000 fine. (Sections 775.082 and 775.083, F.S.).
[21] A first degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a $10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).
[22] *Cooper v. State*, 455 So.2d 588 (Fla. 1st DCA 1984); *Jackson v. State*, 515 So.2d 394 (Fla. 1st DCA 1987).

A good example of a penalty enhancement statute is the habitual felony offender law found in s. 775.084(1)(a), F.S. "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.
- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
  - Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13, F.S., relating to the purchase or the possession of a controlled substance.
- The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this law.
- A conviction of a felony or other qualified offense necessary to the operation of this law has not been set aside in any postconviction proceeding.

In a separate proceeding, if the court finds that the defendant meets the criteria for imposing such sanction, the court must sentence the defendant as a habitual felony offender unless the court finds that it is not necessary for the protection of the public. The court may sentence the habitual felony offender as follows:

- In the case of a life felony or a felony of the first degree, for life.
- In the case of a felony of the second degree, for a term of years not exceeding 30.
- In the case of a felony of the third degree, for a term of years not exceeding 10.[23]

III. Effect of Proposed Changes:

The bill creates two new sections of law relating to the reclassification of criminal penalties under certain circumstances.

The bill creates s. 775.0848, F.S., reclassifying felony offenses to the next higher level in cases when:

- A person who has been previously convicted of a crime relating to the reentry to the United States pursuant to 8 U.S.C. s. 1326; and
- That person commits a felony offense after the federal conviction.

Such felony offense must be reclassified as follows:

- A felony of the third degree is reclassified to a felony of the second degree.[24]

[23] Sections 775.084(1)(a), (3)(a), and (4)(a), F.S.

[24] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. (Sections 775.082 and 775.083, F.S.).

- A felony of the second degree is reclassified to a felony of the first degree.[25]
- A felony of the first degree is reclassified to a life felony.[26]

The bill also creates s. 908.12, F.S., providing similar reclassifications of criminal offenses when a defendant is convicted of committing a misdemeanor or felony for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization. The penalty for any misdemeanor or felony may be reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.[27]
- A misdemeanor of the first degree is reclassified to a felony of the third degree.[28]
- A felony of the third degree is reclassified to a felony of the second degree.[29]
- A felony of the second degree is reclassified to a felony of the first degree.[30]
- A felony of the first degree is reclassified to a life felony.[31]

"Transnational crime organization" is defined as an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

The bill becomes effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[25] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. A first degree felony is punishable by up to 30 years to life imprisonment and a $10,000 fine. (Sections 775.082 and 775.083, F.S.).
[26] A first degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a $10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).
[27] A second degree misdemeanor in punishable by up to 60 days in the county jail and a $500 fine. A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. (Sections 775.082 and 775.083, F.S.).
[28] A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. (Sections 775.082 and 775.083, F.S.).
[29] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. (Sections 775.082 and 775.083, F.S.).
[30] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. A first degree felony is punishable by up to 30 years to life imprisonment and a $10,000 fine. (Sections 775.082 and 775.083, F.S.).
[31] A first degree felony is punishable by up to 30 years or when specifically provided by statute, life imprisonment, and a $10,000 fine. A life felony is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment. (Sections 775.082 and 775.083, F.S.).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference considered this bill on February 12, 2024, and determined that the bill may have a positive insignificant fiscal impact on the Department of Corrections. The bill reclassifies penalties to the next higher degree which may result in more individuals sentenced to prison for longer periods of time.[32]

The term "positive insignificant" means that the bill may result in an increase of 10 or fewer prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 775.0848 and 908.12.

[32] EDR, *Fiscal Estimate for CS/SB 1036; http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1036.pdf* (last visited February 28, 2024).

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 Fiscal Policy on February 27, 2024:
The committee substitute:

- Revises the reclassification for illegal reentry by requiring that a person have a criminal conviction under federal law for reentering the country.

CS by Criminal Justice on January 30, 2024:
The committee substitute:

- Expands the definition of the term "removal" by replacing "removal means" with "removal includes," in order not to limit or eliminate other meanings of the term in federal immigration law.
- Removes language in order to clarify the intent of the bill to *reclassify* the penalty, rather than *enhance* it, for a crime committed for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

B. Amendments:

None.

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

269496

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Ingoglia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 26 - 39
and insert:
proceeding under federal or state law.

(2) A person who has been deported or removed from the United States under federal immigration proceedings, or has departed the United States while such an order of deportation or removal is outstanding, shall have the penalty for committing a felony after unlawfully reentering the United States

269496

reclassified in the following manner:

(a) A felony of the third degree is reclassified to a felony of the second degree.

(b) A felony of the second degree is reclassified to a felony of the first degree.

(c) A felony of the first degree is reclassified to a life felony.

(3) Any record of the United States Department of Homeland Security, the United States Executive Office for Immigration Review, or the United States Citizenship and Immigration Services concerning the legal status of a person, including, but not limited to, any conviction, deportation, removal, or reentry order or document, is presumed to be prima facie genuine, and must be received as evidence in all courts of this state without further authentication, provided it bears the signature, name, and title of an officer of the United States.

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

And the title is amended as follows:

Delete lines 5 - 12

and insert:

penalty for the commission of a felony committed by a person who unlawfully reenters the United States, and while remaining unlawfully present, after having been deported or removed from the United States under federal immigration proceedings, or who has departed the United States while such an order of deportation or removal was outstanding; specifying that any record of specified federal entities concerning the legal

269496

status of a person is presumed to be prima facie genuine and must be received as evidence in all courts of this state without further authentication under certain circumstances; creating s. 908.12, F.S.; defining the

360462

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Ingoglia) recommended the following:

Senate Amendment to Amendment (269496) (with title amendment)

Delete lines 23 - 25
and insert:
order or document, is presumed to be prima facie genuine under s. 90.902, if it bears the signature, name,

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

360462

Delete lines 41 - 43

and insert:

genuine; creating s. 908.12, F.S.;

350306

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Ingoglia) recommended the following:

Senate Substitute for Amendment (269496) (with title amendment)

Delete lines 24 - 39
and insert:
A person who has been previously convicted of a crime relating to the reentry of removed aliens under 8 U.S.C. s. 1326, shall have the penalty for committing a felony committed after such conviction, reclassified in the following manner:
(1) A felony of the third degree is reclassified to a

350306

felony of the second degree.

(2) A felony of the second degree is reclassified to a felony of the first degree.

(3) A felony of the first degree is reclassified to a life felony.

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

And the title is amended as follows:

Delete lines 3 - 12

and insert:

penalties; creating s. 775.0848, F.S.; requiring reclassification of the penalty for the commission of a felony committed by a person who has previous specified convictions; creating s. 908.12, F.S.; defining the

By the Committee on Criminal Justice; and Senator Ingoglia

591-02642-24 20241036c1

A bill to be entitled

An act relating to reclassification of criminal penalties; creating s. 775.0848, F.S.; defining the term "removal"; requiring reclassification of the penalty for the commission of a new felony committed by a person who unlawfully reenters the United States, and while remaining unlawfully present, after having been deported or removed from the United States under federal immigration proceedings for committing a felony, or who has departed the United States while such an order of deportation or removal was outstanding; creating s. 908.12, F.S.; defining the term "transnational crime organization"; authorizing reclassification of the penalty for any misdemeanor or felony offense if the commission of such offense was for specified purposes; providing an effective date.

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

Section 1. Section 775.0848, Florida Statutes, is created to read:

775.0848 Commission of a felony after unlawful reentry into the United States; reclassification.—

(1) As used in this section, the term "removal" includes any agreement in which a person stipulates to removal during a criminal proceeding under federal or state law.

(2) A person who has been deported or removed from the United States under federal immigration proceedings for committing a felony, or has departed the United States while

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

591-02642-24 20241036c1

such an order of deportation or removal is outstanding, shall have the penalty for committing a new felony after unlawfully reentering the United States, and while remaining unlawfully present, reclassified in the following manner:

(a) A felony of the third degree is reclassified to a felony of the second degree.

(b) A felony of the second degree is reclassified to a felony of the first degree.

(c) A felony of the first degree is reclassified to a life felony.

Section 2. Section 908.12, Florida Statutes, is created to read:

908.12 Transnational crime organizations; reclassification.—

(1) As used in this section, the term "transnational crime organization" means an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

(2) The penalty for any misdemeanor or felony may be reclassified if the commission of such misdemeanor or felony was for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization. The reclassification is as follows:

(a) A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

(b) A misdemeanor of the first degree is reclassified to a felony of the third degree.

(c) A felony of the third degree is reclassified to a felony of the second degree.

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

(d) A felony of the second degree is reclassified to a felony of the first degree.

(e) A felony of the first degree is reclassified to a life felony.

Section 3. This act shall take effect October 1, 2024.

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The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
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SB 1036
Bill Number or Topic

#350345 Substitute Amendment
Amendment Barcode (if applicable)

Name Phil Archer - State Atty - 18th Phone (321) 637-5575

Address
Street
Viera FL 32940
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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Committee

1036
Bill Number or Topic

350306
Amendment Barcode (if applicable)

Name Bill Gladson State Attorney 5th Circuit

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Email wgladson@sao5.org

Ocala FL 34480
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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S-001 (08/10/2021)

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The Florida Senate

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SB 1036
Bill Number or Topic

350306
Amendment Barcode (if applicable)

Name Brian Haas, State Attorney, 10th Judicial Circuit Phone

Address
Street

Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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Committee

~~AM 350246~~
SB 1036
Bill Number or Topic

~~350246~~ 350306
Amendment Barcode (if applicable)

Name Amira Fox - State Attorney 20th Circuit Phone

Address Street

Email

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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1036
Bill Number or Topic

350306
Amendment Barcode (if applicable)

Name State Attorney Jack Campbell

Phone 850 606-6012

Address 301 S. Monroe St
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Tallahassee FL 32399
City State Zip

Email

Speaking: [X] For [ ] Against [ ] Information **OR** Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[ ] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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SB 1036
Bill Number or Topic

Amendment Barcode (if applicable)

Name Yenisbel Vilorio

Phone

Address
Street

Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Six Action

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

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Committee

SB 1036
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aurelie Colon (Low-ray-tee) Phone 9548818595

Address 483 Washington Ave Email
Street

Montgomery AL
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
SPLC Action Fund

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/CS/SB 1178
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government; Regulated Industries Committee; and Senator Bradley and others
SUBJECT:	Community Associations
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Oxamendi/Davis	Betta	AEG	**Fav/CS**
3.	Oxamendi	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1178 relates to the governance of condominium and cooperative associations and the practice of community association management. Regarding community association managers (CAMs) and CAM firms, the bill:

- Requires CAMs and CAM firms to return all community association records in their possession within 20 business days of termination of a services agreement or a written request whichever occurs first, with license suspension and civil penalties for noncompliance, except that the time frames applicable to timeshare plans apply to the records of a timeshare plan.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with CAMs and CAM firms, or a relative, that may present a conflict of interest. The requirements are similar to the conflicts of interest provisions for condominium associations and their officers and directors.
- Provides grounds to discipline CAMs and CAM firms for failure to disclose a conflict of interest as required by the bill.

Regarding the milestone inspection requirements, the bill exempts four-family dwelling with three or fewer habitable stories above ground. Current law exempts single-family, two-family, and three-family dwellings from these requirements.

Regarding access to the official records of a condominium association, the bill:

- Requires official records be maintained in an organized manner that facilitates inspection by unit owners.
- Prohibits access to unit owner email addresses and facsimile numbers without a unit owner's consent, and prohibits the sale or sharing of such personal information to third parties.
- Effective January 1, 2026, decreases from 150 units to 25 units the threshold requirement for an association to maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires official records to be provided to the unit owner at no charge if the Division of Condominium, Timeshares, and Mobile Homes (division) subpoenas records an association has failed to timely provide in response to a unit owner's written request.
- Requires associations to maintain additional financial records (e.g., invoices and other documentation that substantiates any receipt or expenditure) to be maintained by a condominium association for inspection by association members as official records.
- Permits associations to fulfill records requests by directing unit owners to the records that are posted on the association's website.
- Requires associations to respond to a records request with a checklist of all records provided.
- Authorizes the division to request access to an association's website to investigate complaints related to unit owner access to official records on such website.

The bill provides the following criminal penalties related to condominium associations:

- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept any thing or service of value or kickback;
- First degree misdemeanor for knowingly or intentionally defacing or destroying required accounting records or knowingly and intentionally failing to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and "repeatedly" violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

In addition, the bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

The bill expands the requirement that officers and directors charged by information or indictment with a criminal violation created in the bill are deemed removed from office and a vacancy declared to include forgery of a ballot envelope or voting certificate, theft or embezzlement involving the association's funds or property, destruction of, or refusal to allow inspection or copying of, an official record in furtherance of any crime, and any criminal violation under ch 718, F.S.

Regarding condominium association budgets, financial reporting, and reserves, the bill:

- Revises the term "deferred maintenance" to "planned maintenance."
- Prohibits associations from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.
- Revises reserve maintenance requirements to:
  - Require an association to provide unit owners with a notice that the structural integrity reserve study (SIRS) is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
  - Clarify that the turnover report required under s. 718.301(4)(p), F.S., consists of a SIRS.
  - Allow a temporary pause in the funding of reserves or a reduction in reserve funding if the entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, F.S., as determined by the local enforcement agency, upon the approval of a majority of the members. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building and its structures are habitable, the association must immediately resume contributing funds to its reserves.

In addition, the bill requires condominium associations to notify the division within 45 days after the structural integrity reserve study is completed, and requires the division to maintain, by January 1, 2025, a database on its website of associations that have completed the SIRS. The bill also requires the division to include an internet link to a list of associations that have completed the SIRS in its annual report.

Regarding meetings of the boards of administration for condominium associations, the bill:

- Requires condominium associations of 10 or more units to meet at least once each quarter for the purpose of responding to inquiries from members and informing members on the status of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association.
- Requires associations to include a copy of the proposed contract if the notice for a board meeting relates to the approval of a contract.

The bill provides education requirements for the officers and directors of condominium associations to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the documents to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an approved condominium education course;
- Provide that the written certification and educational certificate are valid for seven years after the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during a seven-year period.;
- Require directors to annually complete continuing education about recent changes to the condominium laws and rules;
- Extend the time an association must retain a copy of an officer or director's educational certificate from five years to seven years;

- Require association directors to certify that all directors have completed the required written certification and educational certificate requirements; and
- Allow associations to pay, as an expense of the association, for the cost of a director's required educational curriculum and certificate; and require the education curriculum to be at least four hours long and include instruction on milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.

Regarding voting in condominium associations, the bill:

- Provides criminal penalties related to fraudulent voting activities that are punishable as first degree misdemeanors, including preventing members from voting, and menacing, threatening, or using bribery to directly or indirectly influence or deter a member from voting.
- Requires associations to notify a unit owner or member that his or her voting rights may be suspended due to nonpayment of a fee or other monetary obligation at least 90 days before an election.
- Allows condominium and cooperative unit owners to consent to electronic voting in condominium association elections by using an electronic means of consent. Current law requires the consent to electronic voting to be made in writing.

The bill revises the requirements for the installation of hurricane protection in a condominium building to:

- Create a uniform definition for "hurricane protection," to include hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property;
- Require condominium declarations to delineate the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections, exterior doors, windows, and glass apertures;
- Provide when a majority vote of the unit owners is required to install hurricane protection;
- Provide a uniform procedure for approval of hurricane protection by the unit owners, including requiring the board to record a certificate in the public records evidencing that the association has voted to install hurricane protection; and
- Provide that, unless otherwise provided in a declaration of condominium recorded in the public record before July 1, 2024, unit owners are not responsible for the cost of removal and reinstallation of hurricane protection if the removal is necessary to repair condominium property.

The bill revises the prohibitions against "strategic lawsuits against public participation" or "SLAPP suits," which occur when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.

The bill specifically includes condominium associations in the SLAPP suit prohibition, and protects unit owners from reporting complaints to government agencies or law enforcement, or making public statements critical of the operation or management of an association by:

- Prohibiting associations from retaliating against unit owners, such as by increasing assessments, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and

- Prohibiting associations from spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

Regarding officers and directors of a condominium association, the bill provides that the attendance of an officer or director at a meeting of the board is sufficient to constitute a quorum for the meeting and for any vote taken in his or her absence when the director is required to leave the room during the discussion and the taking of a vote on a contract in which the director, or his relative, has an interest.

The bill expands the division's post-turnover jurisdiction to include to include procedure and records related to financial issues under specified provisions, elections under specified provisions (including electronic voting), allegations of criminal violations under ch. 718, F.S., procedural aspects of meetings under specified provisions, disclosure of conflicts of interest, removal of directors and officers for specified criminal violations, and any written inquiries by unit owners to the association. In addition, the bill:

- Requires that the division must refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Authorizes the division to issue citations and promulgate rules to provide for citation bases and citation procedures in accordance in the division's authority, responsibilities, and duties outlined in s. 718.501, F.S.
- Authorizes the division to impose a civil penalty for a violation of ch. 617, F.S., relating to corporations not for profit.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman may attend and observe any meeting of the board or any unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association, for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.

The bill requires the division to submit findings by January 1, 2025, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, of its review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement.

The bill provides that the statute of limitations and statute of repose for certain actions available to a condominium association or a cooperative association, will not begin to run until the unit owners have elected a majority of the members of the board of administration.

The bill also requires the Florida Building Commission division to submit a report by December 1, 2024, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, of its review of the standards to prevent water intrusion through the tracks of sliding glass doors.

Regarding cooperative associations, the bill:

- Revises the term "deferred maintenance" to "planned maintenance."
- Requires an association to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
- Clarifies that the turnover report required under s. 719.301(4)(p), F.S., consists of a structural reserve study.

The bill has a significant negative fiscal impact on state expenditures. For the 2024-2025 fiscal year, the bill appropriates $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund to the Department of Business and Professional Regulation, and 65 full-time equivalent positions with an associated salary rate of 3,180,319 are authorized, for the purpose of implementing the provisions of this bill. See Section V., Fiscal Impact Statement.

Except as otherwise expressly provided, the bill takes effect July 1, 2024.

II. Present Situation:

Milestone Inspections

Section 553.899, F.S., requires residential condominium and cooperative buildings that are three stories or more in height, as determined by the Florida Building Code, to have a milestone inspection by December 31 of the year in which the building reaches 30 years of age. However, if a building reaches 30 years of age before July 1, 2022, the initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's milestone inspection must be performed before December 31, 2025. The local enforcement agency will provide written notice of the required inspection to the association.[1]

Local enforcement agencies that are responsible with enforcing the milestone inspection requirements may set a 25-year inspection requirement if justified by local environmental conditions, including proximity to seawater.[2] Local enforcement agencies may also extend the inspection deadline for a building upon a petition showing good cause that the owner or owners of the buildings have entered into a contract with an architect or engineer to perform the milestone inspection services and the milestone inspection cannot reasonably be completed before the deadline.[3]

The milestone inspection requirement applies to buildings that in whole or in part are subject to the condominium or cooperative forms of ownership, such as mixed-ownership buildings. Consequently, all owners of a mixed-ownership building in which portions of the building are subject to the condominium or cooperative form of ownership are responsible for ensuring compliance and must share the costs of the inspection.

The purpose of a milestone inspection is to determine the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determine the general structural

[1] Section 553.899(3), F.S.
[2] Section 553.899(3)(b), F.S.
[3] Section 553.899(3)(c), F.S.

condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.[4] The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.[5] The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.[6]

In addition, s. 553.899, F.S.:

- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Provides the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the affected association.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.

Within 45 days after receiving a milestone inspection report, the condominium or cooperative association must distribute a copy of an inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner. The inspector-prepared summary must be provided to unit owners, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under ch. 718, F.S., or ch. 719, F.S., as applicable, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission. The association must also post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Condominium and Cooperative Associations

Chapters 718 and 719, F.S.

Chapter 718, F.S., relating to condominiums, and ch. 719, F.S., relating to cooperatives, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,[7] recordkeeping requirements, including which records are accessible to the members of

[4] Section 553.899(2)(a), F.S.
[5] *Id.*
[6] *Id.*
[7] *See* ss. 718.112(2) and 719.106(2)(c), F.S., for condominium and cooperative associations, respectively.

the association,[8] and financial reporting.[9] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively.

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S,"[10] the "Condominium Act." Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.[11] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[12]

A condominium association is administered by a board of directors referred to as a "board of administration."[13] The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[14]

There are approximately 1,529,764 condominium units in Florida operated by 27,588 associations.[15] Approximately 912,376 of these condominium units in Florida are at least 30 years in age.[16] Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.[17]

It has been estimated that there are over two million residents occupying condominiums 30 years or older in Florida, based upon census data indicating an average of approximately 2.2 persons living in a condominium unit.[18]

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[8] *See* ss. 718.111(12) and 719.104(2), F.S., for condominium and cooperative associations, respectively.
[9] *See* ss. 718.111(13) and 719.104(4), F.S., for condominium and cooperative associations, respectively.
[10] Section 718.103(11), F.S.
[11] *See* s. 718.103, F.S., for the terms used in the Condominium Act.
[12] *Id.*
[13] Section 718.103(4), F.S.
[14] Section 718.103(2), F.S.
[15] Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, *available at:* https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf (last visited Jan. 24, 2024).
[16] *Id.*
[17] *Id.*
[18] *Id.*

Cooperatives

Section 719.103(12), F.S., defines a "cooperative" to mean:

> [T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[19] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[20] There are 778 cooperative associations in Florida that are registered with the DBPR.[21]

Miami-Dade County Grand Jury Report "Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action"

The increasing numbers of condominiums in Florida, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR, motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium residents and the DBPR's responses to their complaints.[22] The grand jury's report contains numerous findings and recommendations, but those relevant to the provisions of the bill are discussed below.

Additional Issues

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

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[19] *See Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), *review dismissed* 2020 WL 3442763 (Fla. 2020).
[20] *See* ss. 719.106(1)(g) and 719.107, F.S.
[21] *See* Task Force Report, pp. 4-5.
[22] *Final Report of the Miami-Dade County Grand Jury (Addressing Condo Owner's Pleas for Help: Recommendations for Legislative Action)* (Filed Feb. 6, 2017), Eleventh Judicial Circuit, available at https://miamisao.com/wp-content/uploads/2021/02/2016-Spring-Grand-Jury-Report-Final.pdf (last visited on Jan. 24, 2024). This document is further cited in this analysis as "*Final Report of the Miami-Dade County Grand Jury*."

III. Effect of Proposed Changes:

Condominiums Within a Portion of a Building or Within a Multiple Parcel Building

Present Situation

The term "condominium" is defined in the Condominium Act to mean:[23]

> …that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

The term "condominium property" is defined in the Condominium Act to mean:[24]

> …the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

The "common elements" of a condominium include:[25]

- The condominium property which is not included within the units.
- Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.
- An easement of support in every portion of a unit which contributes to the support of a building.
- The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

Other parts of the condominium may be declared common elements in the declaration of condominium.[26]

A condominium association is administered by a board of directors referred to as a "board of administration."[27] The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[28]

There are several types of condominiums:

- Phase condominiums in which the developer may develop the condominium in phases with all phases completed within a seven-year period.[29]

[23] Section 718.103(12), F.S.
[24] Section 718.103(14), F.S.
[25] Section 718.108(1), F.S.
[26] Section 718.108(2), F.S. Section 718.103(16), F.S., defines the terms "declaration" or "declaration of condominium" to mean the instrument or instruments by which a condominium is created, as they are from time to time amended.
[27] Section 718.103(4), F.S.
[28] Section 718.103(2), F.S.
[29] Section 718.403, F.S.

- Mixed-use condominiums in which the condominium contains both commercial and residential units.[30]
- Multi-condominiums in which the real property contains two or more condominiums, all of which are operated by the same association.[31]
- Condominiums created within condominium parcels, i.e., a condominium is created within a condominium unit with an undivided share in the appurtenant common elements.[32]

Recent Case Law - Mixed-Use Condominiums

In a recent decision by the Florida Third District Court of Appeals (3rd DCA), the court held that the declaration of condominium had impermissibly divested a unit of its undivided share of the common elements by designating certain portions of the condominium property as "shared facilities."[33]

In *IconBrickell*, the condominium is a mixed-use condominium consisting of residential condominium units and a luxury hotel. The declaration of condominium designated a wide variety of specific portions of the common elements as "shared facilities" under the exclusive ownership and control of the hotel unit owner. The "shared facilities" include the balconies, lobby, elevators, and the infrastructure for utilities, such as wires and pipes. The term "shared facilities" is not defined in ch. 718, F.S.

Even though the residential unit owners did not have a common ownership interest in the "shared facilities," the declaration burdened the residential unit owners, and not the owner of the hotel, with expenses incurred by the owner of the hotel for the maintenance, repair, replacement, improvement, management, and operation of the shared facilities.

The court held that the "recharacterization, and the resultant expropriation of undivided common ownership, indubitably contravenes the edict of the [Condominium] Act."[34]

Effect of Proposed Changes

Effective October 1, 2024, the bill revises the definition for the term "condominium property" in s. 718.103(14), F.S., to mean:

> the lands, leaseholds, improvements, any personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous, which are subjected to condominium ownership.

Effective October 1, 2024, s. 718.104(4)(b), F.S., relating to the creation of condominiums, is revised by the bill to provide that condominiums created within a portion of a building or within a multiple parcel building shall include the name by which the condominium is to be identified

[30] *See* ss. 718.103(24) and 718.404, F.S.
[31] *See* ss. 718.103(21) and 718.405, F.S.
[32] Section 718.406, F.S. Section 718.103(13), F.S., defines a "condominium parcel" to mean a unit, together with the undivided share in the common elements appurtenant to the unit.
[33] *IconBrickell Condominium No. three Association, Inc. v. New Media Consulting*, L.L.C., 310 So.3rd 477 (Fla. 3rd DCA 2020).
[34] *IconBrickell* at 481.

and be followed by "a condominium within a portion of a building or within a multiple parcel building."

Effective October 1, 2024, the bill revises ss. 718.202(1) and (3), F.S., relating to the escrow requirements in contracts for the sale of a condominium parcel and the construction, furnishing and landscaping of the property. Section 718.202(1), F.S., is revised to allow developers of nonresidential condominiums the option of delivering to the escrow agent a surety bond or an irrevocable letter of credit with specified conditions. The surety bond or irrevocable letter of credit must be in an amount equivalent to the aggregate of some or all payments up to 10 percent of the sale price received by the developer from all buyers towards the sale price, in all cases the aggregate of the initial 10 percent of deposit monies being released secured by a surety bond or irrevocable letter of credit in an equivalent amount.

The bill revises s. 718.202(3), F.S., which allows a developer to use escrow funds in excess of 10 percent of the purchase price to pay for actual costs incurred by the developer in the construction and development of the condominium property, to allow the developer to use such escrow funds for the construction and development of easements and the rights appurtenant thereto.

The bill creates s. 718.407. F.S., to provide conditions, including disclosure requirements in sales contracts, for the creation of condominiums within a portion of a building or within a multiple parcel building.

Section 718.407(1), F.S., provides that a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), F.S.[35]

The bill provides that a condominium may be created within a portion of a building or within a multiple parcel building notwithstanding the definition for "condominium" in s. 718.103(12), F.S., or the provision of s. 718.108(1), F.S., relating to common elements.

Section 718.407(2), F.S., provides that the common elements of a condominium created within a portion of a building or a multiple parcel building are only the portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

Section 718.407(3), F.S., provides that the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable (creating document) under s. 718.407, F.S., must specify all of the following:

- The portions of the building which are included in the condominium and the portions of the building that are excluded.
- The party responsible for maintaining and operating those portions of the building which are shared facilities, and which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.

[35] Section 193.0237(1), F.S., defines a "multiple parcel building" to mean "a building, other than a building consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land."

- The manner in which the expenses for the maintenance and operation of the shared facilities will be apportioned:
  - An owner of a portion of the building, which is not submitted to the condominium form of ownership, or the condominium association, as applicable, submitted to condominium form of ownership, must approve any increase in the apportionment of expenses to such portion of the building.
  - The apportionment of expenses for the maintenance and operation of the shared facilities may be based on any of the specified criteria or any combination thereof.
  - An alternative method of apportionment of expenses may be provided if the apportionment method is stated in the creating document.
- The party responsible for collecting shared expenses.
- The rights and remedies that are available to enforce payment of shared expenses.

The specified criteria for the apportionment of expenses for the maintenance and operation of the shared facilities include:
- The area or volume of each portion of the building in relation to the total area or volume of the entire building without the shared facilities.
- The initial estimated market values of each portion compared to the initial estimated market value of the entire building.
- The extent the owners are allowed to use the shared facilities.

It is unclear how these criteria are to be applied if the expenses are appropriate.

Section 718.407(4), F.S., provides that the association of a condominium subject to s. 718.407, F.S., has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

Section 718.407(5), F.S., provides a disclosure summary that must be included, in conspicuous type,[36] in every contract for the sale of any condominium created under s. 718.407, F.S. The disclosure summary informs the prospective purchaser of a condominium unit that:
- The condominium is created within a portion of a building or within a multiple parcel building.
- The common elements of the condominium consist only of the portions of the building submitted to the condominium.

The disclosure summary includes the buyer's acknowledgment that:
- The condominium may have minimal or no common elements.
- Portions of the building that are not included in the condominium are (or will be) governed by a separate recorded instrument that contains important provisions and rights.
- The party that controls the maintenance and operation of the portions of the building that are not included in the condominium determines the budget for the operation and maintenance of

[36] Section 718.103(15), F.S., defines the term "conspicuous type" to mean "bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print."

such portions; however, the association and unit owners are still responsible for their share of such expenses.
- The allocation between the owners of the costs to maintain and operate the building can be found in the declaration of condominium or other recorded instrument.

Section 718.407(6), F.S., provides that the creation of a multiple parcel building is not a subdivision of the land upon which such building is situated, provided the land itself is not subdivided.

Effective October 1, 2024, the bill revises s. 718.503(2)(a), F.S., which lists the documents a nondeveloper seller of a unit must give to a prospective purchaser of a unit, to include the annual financial statement and annual budget of the condominium association.

Effective October 1, 2024, the bill also revises s. 718.503(3), F.S., relating to disclosures the seller of a condominium unit must give in sales contracts before the sale of a unit, to provide that, if a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by ss. 718.407(5) and (6), F.S.

Effective October 1, 2024, the bill revises s. 718.504, F.S., to require the prospectus or offering circular for a condominium to state whether the condominium is created within a portion of a building or a multiple parcel building. The developer of a condominium with more than 20 residential units must prepare a prospectus or offering circular, which must be filed with the division and given to each prospective purchaser of a unit.

The bill creates an undesignated section of Florida law to provide that the amendments made to s. 718.103, F.S., which revise the definition for the term "condominium property," and s. 718.202(3), F.S., relating to the use of escrow funds by the developer, and the creation of ss. 718.407(1), (2), and (6), F.S., by the bill are intended to clarify existing law and to apply retroactively. The bill also provides the provisions in the bill do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before October 1, 2024.

Community Association Managers

Present Situation

Community Association Manager Regulation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR or department) pursuant to part VIII of ch. 468, F.S.

Section 468.431(2), F.S., defines "community association management" to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a

> community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.[37]

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to four-year terms by the Governor and confirmed by the Senate.[38]

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.[39] Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.[40]

Practice Standards and Conflicts of Interest

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms, including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees." In addition, if a CAM or CAM firm has a contract with a community association that has a building on the association's property that is subject to s. 553.899, F.S., the CAM or firm must comply with that section as directed by the board.

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including contracting, on behalf of an association, with any entity in which the CAM or CAM firm has a financial interest that is not disclosed to the association.

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other

[37] Section 468.431(2), F.S.
[38] Section 468.4315(1), F.S.
[39] Section 468.433, F.S.
[40] Sections 468.4336 and 468.4337, F.S.

transactions by an affirmative vote of two-thirds of all other directors present. Current law does not have a comparable process for a CAM's or CAM firm's disclosure of a potential conflict of interest or the process for an association's affirmative acceptance or approval of such a conflict of interest.

Effect of Proposed Changes

The bill revises the following requirements for CAM and CAM firms under part VIII of ch. 468, F.S., which apply to all CAM and CAM firms engaged in community association management in condominium associations under ch. 718, F.S., cooperative associations under ch. 719, F.S., and homeowners' associations under ch. 720, F.S.

The bill creates s. 468.4334(3), F.S., to require a CAM or CAM firm to return all community association records in his or her possession within 20 business days of termination of services agreement or a written request, whichever occurs first. The bill allows a CAM or CAM firm to retain records for up to 20 business days after the contract is terminated in order to complete an ending financial statement or report. If the association fails to provide the CAM or CAM firm access or retention to the accounting records, the CAM or CAM firm is relieved of any further responsibility or liability for preparation of the statement or report. If the CAM or CAM firm fails to timely return all of the official records within its possession to the community association, the successor CAM firm, the bill creates a rebuttable presumption that the CAM or CAM firm willfully failed to comply with this subsection.

However, the bill also provides that a CAM or CAM firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, F.S., and a civil penalty of $1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

The bill provides such notice of termination must be sent by:
- Certified mail;
- Return receipt request; or
- In the manner required in the management contract.

However, under the bill, a timeshare plan licensed under ch. 721, F.S., is subject to the time periods in s. 721.14(4)(b), F.S.

The bill creates s. 468.4335, F.S., to provide additional conflict of interest disclosure requirements for CAMs and CAM firms and a process for associations to follow when approving contracts with a CAM or CAM firm, or a relative of a CAM, which may present a conflict of interest. The requirements are similar to those applicable to contracts between condominium associations and their officers and directors.

The bill requires a CAM or CAM firm, including the directors, officers, persons with a financial interest in the CAM firm and relatives of such persons, to provide a written disclosure of any activity which may reasonably be construed by the board to be a conflict of interest. The bill

creates a rebuttable presumption of an existing conflict of interest if a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or the relative of such persons:

- Enters into a contract for goods or services with the association, other than community association management services.
- Holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Under the bill, if the association receives and considers a bid to provide a good or service that exceeds $2,500, other than community association management services, from a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or a relative of such persons, the association must also solicit multiple bids from other third-party providers of such good or service.

The bill requires that the proposed activity that may be a conflict of interest must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the board's meeting agenda and entered into the written minutes of the meeting. The board must approve the contract or other transaction by an affirmative vote of two-thirds of all other directors present.

At the next regular or special meeting of the members, the existence of the conflict of interest and the contract or other transaction must be disclosed to the members. If a CAM or CAM firm has previously disclosed a conflict of interest in an existing management contract with the association, the conflict of interest does not need to be additionally noticed and voted on during the term of the contract, but must be noticed and voted on in accordance with the provision in the bill upon renewal of the contract.

If the contract is canceled because the board finds that the CAM or CAM firm has violated the discloser requirements, the bill provides that the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Under the bill, if the activity has not been properly disclosed as a conflict of interest or potential conflict of interest, the contract is voidable and terminates upon the association filing a written notice terminating the contract.

The bill defines the term "relative" to mean a relative within the third degree of consanguinity[41] by blood or marriage of a board member or officer.

[41] Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. *See*: https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Jan. 24, 2024).

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary grounds on the basis of a CAM or CAM firm's failure to disclose a conflict of interest as required by s. 468.4335, F.S.

Milestone Inspections

Present Situation

Condominium and cooperative buildings that are single-family, two-family, and three-family dwellings with three or fewer habitable stories above ground are exempt from the milestone inspection requirement.[42]

Effect of Proposed Changes

The bill amends s. 553.899(4), F.S., to exempt four-family dwellings with three or fewer habitable stories above ground from the milestone inspection requirements.

Condominium Officers and Directors

Present Situation

Breaches of a Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.[43] An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or a kickback for which consideration has not been provided for the benefit of such person (or immediate family members) from any person providing or proposing to provide goods or services to the association.[44]

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.

Section 718.111(1)(d), F.S., requires an officer, director, or agent to discharge his or her duties in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties. The breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or

[42] Section 533.899(4), F.S.
[43] Section 718.111(1)(a), F.S.
[44] Section 718.111(1)(a), F.S., does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 617.0834, F.S., relates to the provisions for the civil liability of officers and directors of not-for-profit corporations and associations.[45] Section 617.0834(1), F.S., provides that officers and directors of certain not-for-profit corporations and associations are not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless the officer or director:

- Breached or failed to perform his or her duties as an officer or director; and
- Breached or failed to perform his or her duties, and the breach constitutes:
  - A criminal violation, unless he or she had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful.[46]
  - A transaction from which he or she derived an improper personal benefit, directly or indirectly; or
  - A recklessness or an act or omission committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Miami-Dade County grand jury found:

> Although the directors have a legally mandated fiduciary obligation toward their unit owners, it appears that some of them are more involved in self-dealing and looking out for their own financial interests. The position of board director is not generally a paid position. Yet, some directors appear to view the ability to get into office as an opportunity to cash in. This should not be countenanced.[47]

Criminal Prohibitions

Section 718.111(1)(d), F.S., also criminalizes the following acts:

- Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, F.S.;
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Removal from Office

[45] Corporations that operate residential homeowners' associations are governed by ch. 720, F.S., relating to homeowners' associations, and are subject to part I of ch. 607, F.S., the Florida Business Corporation Act, or ch. 617, F.S., relating to corporations not-for-profit.

[46] Section 617.0834, F.S., does not provide criminal penalties nor reference the criminal law that is violated by the officer's or director's breach or failure to perform his or her duties.

[47] *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at page 10 (citation omitted).

Section 718.112(2)(q), F.S., requires a board to immediately remove from office any officer or director who is charged with felony theft or embezzlement involving association funds. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilt or nolo contendere, the director or officer must be reinstated for any remainder of his or her term of office.

Section 718.111(1)(d), F.S., also provides that an officer or director charged by information or indictment with any crime referenced in this paragraph[48] must be removed from office, and the vacancy must be filled as provided in s. 718.112(2)(d)2., F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Defacing or Destroying Records

Section 718.111(12)(c)2., F.S., provides that any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.[49]

Effect of Proposed Changes

Additional Criminal Prohibitions

The bill amends s. 718.111, F.S., to provide the following additional criminal prohibitions relating to the management of a condominium association, and provides penalties for violations:

- Third degree felony[50] for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept a kickback, which the bill defines as anything or service of value for which consideration has not been provided for an officer's, a director's,

[48] The only crimes specifically referenced in s. 718.111(1)(d), F.S., are the previously-described offenses relating to forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records. Additionally, s. 718.111(1)(d), F.S., states that an officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834, F.S. The reference to criminal violations in s. 718.111(1)(d), F.S., is slightly different than the reference to criminal violations in s. 718.112(2)(o), F.S., which provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office. The latter provision appears to be more limited than the former provision.

[49] Section 718.501(1), F.S., authorizes the division to enforce and ensure compliance with the provisions of the Condominium Act, and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of the Condominium Act, an adopted rule, or a final order of the division.

[50] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

or a manager's benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association;

- First degree misdemeanor[51] to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members (and deletes the provision that such an offense is punishable by a civil penalty);[52]
- Second degree misdemeanor[53] for any director or member of the board or association to knowingly, willfully, and "repeatedly" violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association; and
- Third degree felony[54] to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.[55]

Use of Credit Cards

The bill amends s. 718.111(15), F.S., to revise the prohibitions related to use of an association's credit card. Under the bill, a person commits theft[56] by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines a "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget. The bill deletes the provision in current law that the unlawful use of an association's credit card constitutes credit card fraud pursuant to s. 817.61, F.S.

Removal from Office

The bill amends s. 718.112(2)(q), F.S., to expand the number of crimes for which an officer or director charged by information or indictment must be removed from office to include:

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[51] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[52] This provision is similar to the Miami-Dade County grand jury's recommendation to criminally punish directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records. The grand jury recommended a second degree misdemeanor for a first offense, and a first degree misdemeanor for any subsequent offenses. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

[53] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[54] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

[55] This provision is similar to the Miami-Dade County grand jury's recommendation to make it a third degree felony for any association, board director, management company, or management company employee to willfully, knowingly, or intentionally refuse to release or otherwise produce official association records, if such refusal is done to facilitate or cover-up the commission of a crime. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

[56] Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. *Id.*

- Forgery of a ballot envelope or voting certificate used in a condominium association election punishable as a felony crime as provided in s. 831.01, F.S.;[57]
- Theft or embezzlement involving the association's funds or property as provided in s. 812.014, F.S.;
- Destruction of, or refusal to allow inspection or copying of, an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime which is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.;
- Obstruction of justice under ch. 843, F.S.; and
- Any criminal violation under ch 718, F.S.

Under the bill, a vacancy must be filled as provided by s. 718.112(2)(d), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.[58]

Under the bill, if a criminal charge is pending against an officer or director, he or she may not have access to the official records of any association, except pursuant to a court order.

Fraudulent Voting Activities

The bill creates s. 718.112(2)(r), F.S, to provide that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:[59]

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of

[57] Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[58] Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.
[59] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

In addition, the bill provides that the following actions relating to condominium association elections are fraudulent voting activities and constitute a misdemeanor of the first degree:[60]
- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The criminal prohibitions in s. 718.112(2)(r), F.S., do not apply to a licensed attorney giving legal advice to a client.

Official Records – Condominiums

Present Situation

Section 718.111(12)(a), F.S., requires a condominium association to maintain various records, including but not limited to, the association's recorded bylaws and amendments to those bylaws, articles of incorporation and amendments to those articles, bills of sale or transfer for association-owned property, accounting records, voting ballots, contracts for work to be performed, and bids.

Section 718.112(12)(a)7., F.S., provides, in pertinent part, that email addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with s. 718.112(12)(c)5.e., F.S., which provides for unit owners to consent in writing to the disclosure of contact information.

An association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.[61]

Section 718.111(12)(b), F.S., requires that some of these records (e.g., bylaws and articles of incorporation) be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least seven years, unless otherwise provided by general law.[62] The records must be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. An association must make a copy of the records available for inspection or copying by a unit owner

[60] *Id.*
[61] Section 718.112(12)(a)7., F.S.
[62] Section 718.111(12)(b), F.S.

on the condominium property or association property or offer the option of making the records available electronically via the Internet or allow the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(c)1., F.S., provides that official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times.[63] A renter of a unit has a right to inspect and copy the association's bylaws and rules. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with these requirements. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

Section 718.111(12)(g), F.S., provides that by January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units must post digital copies of specified records on its website. These documents include, but are not limited to: the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration, the recorded association bylaws and amendments to those bylaws, articles of incorporation of the association and amendments to those articles, the annual and proposed budget, and various contracts, including any contract or document regarding a conflict of interest or possible conflict of interest. The failure of the association to post required information is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Effect of Proposed Changes

The bill amends the official records requirements for condominium associations in s. 718.111(12), F.S., to require official records be kept in an organized manner that facilitates inspection of the records by unit owners. In addition, if records are lost, destroyed, or otherwise made unavailable, the bill provides that the obligation to maintain official records includes the obligation to recover those records as may reasonably be possible.

Effective January 1, 2026, the bill amends the requirements for condominium associations to maintain specified records available for download on the association's website or by an application on a mobile device to decrease from 150 units to 25 units the threshold for that requirement.

The bill also amends s. 718.111(12), F.S., to:

- Provide that, in accordance with s. 718.112(12)(c)5.e., F.S., e-mail addresses and facsimile numbers are only accessible to unit owners if consent to receive notice by electronic transmission is provided, the unit owner has expressly indicated that such personal

[63] The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

information can be shared with other unit owners, and the unit owner has not provided the association with a request to opt-out of such dissemination with other unit owners;
- Require associations to ensure that such e-mail addresses and facsimile numbers are only used for the business operation of the association and may not be sold or shared with outside third parties;
- Provide that, if personal information is included in documents released to third parties other than unit owners, the association must redact such personal information before the document is disseminated;
- Provide that an association may be liable for the disclosure of the e-mail address or facsimile numbers if made with a knowing or intentional disregard of the protected nature of such information;
- Require additional financial records (all invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association) be maintained by a condominium association and made available for inspection by association members;
- Include within the official records a copy of all satisfactorily completed board member educational certificates;
- Permit associations to comply with its obligations related to a member's right of access to certain official records and right to copies of such records by posting the records on the association's website and directing an authorized requester to such website;
- Require associations to respond to a statutorily compliant written request to inspect records with a checklist of all records made available, and not made available, for inspection and copying;
- Require associations to maintain the checklist provided in response to a written request for seven years (An association delivering a checklist and affidavit creates a rebuttable presumption that the association has complied); and
- Require an association to maintain, and have available for download on the association's website or by an application on a mobile device, building permits related to ongoing or planned construction.

The bill amends s. 718.501(1)(d)7., F.S., to require the division to provide the official records to the unit owner at no charge when the division subpoenas the records the association failed to timely provide in response to a unit owner's written request.

The bill also amends s. 718.501(1)(u), F.S, to provide that, if the division receives a complaint regarding access to official records on the association website under s. 718.718.111(12)(g), F.S., the division may request access to the association website and investigate. The division may adopt rules to carry out this provision.

Financial Reporting – Condominiums

Present Situation

Section 718.111(13), F.S., provides the financial reporting requirements for condominium associations. Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the governing board of the association must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the board or received from the third party, but no later than 120

days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The association must deliver the financial report, by mail or hand delivery to each unit owner at the address last furnished to the association by the unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner.

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than $150,000 must prepare a report of cash receipts and expenditures.
- At least $150,000 but less than $300,000 must prepare *compiled* financial statements.[64]
- At least $300,000 but less than $500,000 must prepare *reviewed* financial statements.[65]
- $500,000 or more must prepare *audited* financial statements.[66]

An association may prepare a more or less stringent type financial report if approved by vote of the majority of the voting interest of the association.[67] An approval to provide a less stringent type of financial report is effective only for the year in which the vote is taken and for the following fiscal year.[68]

Effect of Proposed Changes

The bill amends the financial reporting requirements in s. 718.111(13), F.S., to:

- Require the financial statement be delivered by hand delivery or mailed to each unit owner, by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements; and
- Prohibit associations from reducing the required type of financial statement for consecutive years

[64] A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).
[65] A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*
[66] An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*
[67] *See* s. 718.111(13)(c) and (d), F.S.
[68] *See* s. 718.111(13)(d), F.S.

Meetings of the Board of Administration – Condominiums

Present Situation

Section 718.112(2)(c), F.S., requires that all meetings of the board in which a quorum is present to be open to all unit owners. Chapter 718, F.S., provides notice requirements for meetings of the board,[69] but does not mandate the frequency of such meetings.

If the board considers any special or regular assessment against unit owners, the notice for the meeting must specifically state that the assessments will be considered and provide the estimated cost and description of the purposes for such assessments.

Effect of Proposed Changes

The bill amends s. 718.112(2)(c), F.S., to:

- Require condominium associations of 10 or more units to meet at least once each quarter;
- Provide that at least four times each year, the meeting agenda must include an opportunity for members to ask questions;
- Provide that members have the right to ask questions at meetings with respect to reports on the status of construction or repair projects, status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium; and
- Require associations to include a copy of the proposed contract in the notice of a board meeting, or provide electronic access to the contract on the association's website or through an application on a mobile device, if the notice for a board meeting relates to the approval of a contract.

Director and Officer Education – Condominiums

Present Situation

Section 718.112(2)(d)4.b., F.S., provides education or certification requirements for newly elected or appointed members of the board.[70] Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, and homeowners' association must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the

[69] Section 718.112(2)(c), F.S.

[70] Sections 719.106(1)(d)b. and 720.720.303(1)(a), F.S., provide comparable post-election certification requirements for newly elected cooperative and homeowners' association board members, respectively.

election or 90 days after the election or appointment.[71] The curriculum must be administered by a condominium education provider approved by the division.[72] A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.[73] If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.[74] The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.[75]

Effect of Proposed Changes

The bill amends the post-election certification requirements in s. 718.112(2)(d)4.b., F.S., to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the governing documents of the association to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an education course and submit certification that they have completed an educational curriculum administered by the division or a division-approved provider;
- Require a director that was elected or appointed before July 1, 2024, to comply with the written certification and educational certificate requirement by June 2025;
- Provide that the written certification and educational certificate are valid for seven years from the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during a seven-year period;
- Provide that a director who is appointed by the developer may satisfy the educational certificate requirement for any subsequent appointment to a board by a developer within seven years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or appointment to a board in another association within that seven-year period;
- Require directors to annually complete continuing education on recent changes to the condominium laws and rules;
- Require associations to retain the educational certificates of the directors for seven years, instead of five years; and
- Allow associations to pay, as an expense of the association, for the cost of a director's required educational curriculum and certificate.

[71] The division's Internet site provides a listing of approved educational providers for the certification of board members. *See* Department of Business and Professional Regulation, *Condominium & Cooperatives – Education, available at*: http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/education/ (last visited Jan. 24, 2024).
[72] Sections 718.112(2)(d)4.b., F.S.
[73] *Id.*
[74] *Id.*
[75] *Id.*

The bill requires the education curriculum to be at least four hours long and include instruction on milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.

The bill also amends s. 718.501, F.S., to:

- Require the division to adopt by rule the educational curriculum required under s. 718.112(2)(d), F.S., for its approval of condominium education providers; and
- Require the division to provide division-approved education providers with the template certificate for issuance directly to the association board of directors who have satisfactorily completed the education requirements under s. 718.112(2)(d), F.S. The division may adopt rules to implement this section.
- Require the directors of the association to certify, on a form provided by the division, that each director has completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b., F.S.

Reserves and Structural Integrity Reserve Studies – Condominiums and Cooperatives

Present Situation

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000.[76]

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.[77]

A "structural integrity reserve study" (SIRS) is a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection. A SIRS is required for condominium buildings that are three or more stories in height.[78]

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, ss. 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively, associations that are required to have a SIRS may not waive reserves for the SIRS items or use such reserves for other purposes.

Regarding the SIRS, ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively:

[76] *See* s. 718.112(2)(f) and 719.106(1)(j), F.S., relating to reserves requirements for condominium and cooperative associations, respectively.
[77] *Id.*
[78] *See* s. 718.112(2)(g) and 719.106(1)(k), F.S., relating to SIRS requirements for condominium and cooperative associations, respectively

- Require condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height, as determined by the Florida building code.
- Require associations existing on or before July 1, 2022, that are controlled by non-developer unit owners, to have a structural integrity reserve study completed by December 31, 2024.
- Require that the study include a visual inspection, and state the estimated remaining useful life and the estimated replacement cost of the following items (structural integrity items): roof, structure, fireproofing and fire protection systems, plumbing, electrical systems, waterproofing, windows and exterior doors, and any item with a deferred maintenance or replacement cost that exceeds $10,000.
- Require the visual inspection be performed or verified by a person licensed as an engineer, an architect, reserve specialist, or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, any qualified person or entity may perform the other components of a SIRS.
- Provide that the SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined or for which the estimate of useful life is greater than 25 years, but the study may recommend a deferred maintenance amount for such items;
- Exempt from the SIRS requirement:
  - Buildings less than three stories in height;
  - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
  - Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

Members of unit-owner-controlled associations may waive reserves upon a majority vote of the total voting interests of the association. However, after December 31, 2024, unit-owner-controlled condominium and cooperative associations that must obtain a SIRS may not waive reserves. Associations that are required to obtain a SIRS also may not opt to provide less reserves or no reserves than are required for the structural integrity items. Nor may those reserves be used for any other purpose than their intended purpose.[79]

Before turnover of control to the unit owners, ss. 718.301(4)(p) and 719.301(4)(p), F.S., require the developer to perform a turnover inspection performed by a licensed professional engineer or architect, or a reserve specialist or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, this provision does not require that the inspection comply with the SIRS requirements in ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively.

Effect of Proposed Changes

The bill revises the term "deferred maintenance" to "planned maintenance" in chs. 718 and 719, F.S.

[79] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.

In addition, the bill amends s. 718.112(2), F.S., to allow condominium associations to waive reserves if the entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, F.S.,[80] as determined by the local enforcement agency, upon the approval of a majority of the members. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official[81] that the condominium building and its structures are habitable, the association must immediately resume contributing funds to its reserves.

Relating to the SIRS requirements for condominium and cooperative associations, the bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., respectively, to require these associations to provide unit owners with a copy of the study or deliver a notice that the structural integrity reserve study is available for inspection and copying upon written request within 45 days of completion of the study. The notice may be provided electronically.[82]

Within 45 days after receiving the structural integrity reserve study, the bill requires condominium and cooperative associations to provide the division with a statement indicating that such study was completed and that the association provided or made available such study to each unit owner in accordance with this section. The statement must be provided to the division in the same manner provided by the division using a form posted on the division's website.

In addition, the bill requires the division to maintain, by January 1, 2025, a database on its website of the associations that have completed the SIRS. After December 31, 2024, the association must include the internet link to the database in its annual report.

The bill also clarifies that the turnover report required under ss. 718.301(4)(p) and 719.301(4)(p), F.S., consists of a structural integrity reserve study.

Hurricane Protection – Condominiums

Present Situation

Chapter 718, F.S., does not define the term "hurricane protection."

Section 718.113(5)(b), F.S., provides that a condominium association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

[80] Section 252.34(8), F.S., defines the term "natural emergency" to mean an emergency caused by a natural event, including, but not limited to, a hurricane, a storm, a flood, severe wave action, a drought, or an earthquake.
[81] *See* s. 533.71(5), F.S., defining "local enforcement agency."
[82] This notice delivery requirement is identical to the requirement for delivery of the inspector-prepared summary of the milestone inspection report required under. s. 553.899, F.S.

Section 718.113(5)(c), F.S., authorizes the board to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in s. 718.113(5)(c), F.S., are not a material alteration to the common elements or association property.[83]

Section 718.113(5)(d), F.S., provides that, notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane protection by a unit owner conforming to the specifications adopted by the board.

Section 718.115(1)(e), F.S., requires that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Section 718.115(1)(e)1., F.S., does not indicate that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

Further, s. 718.115(1)(e), F.S., states that a unit owner who has previously installed code-compliant shutters, impact glass, windows, or doors, must receive a credit when code-compliant shutters, impact glass, windows, or doors are installed. A unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code, must receive a credit when the impact glass or code-compliant windows or doors are installed. A unit owner who has installed other types of code-compliant hurricane protection that comply with the currently applicable building code is entitled to receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit must be equal to the pro rata portion of the assessed installation cost assigned to each unit.

Effect of Proposed Changes

The bill substantially revises the existing hurricane protection provisions in ch. 718, F.S.

The bill creates s. 718.103(19), F.S., to define "hurricane protection" to mean "hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane

[83] Section 718.110, F.S., provides the procedure for amending the declaration of condominium. It provides that, "unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment."

protection products used to preserve and protect the condominium property or association property."

The bill clarifies the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections exterior doors, windows, and glass apertures. The bill amends s. 718.104(4)(p), F.S., relating to the creation of condominiums, to require the declarations of residential condominiums and mixed-use condominiums specify whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

The bill amends s. 718.113(5), F.S., to provide that, to protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, the hurricane protection provisions apply to all residential and mixed-use condominiums in Florida, regardless of when the condominium is created pursuant to the declaration. The bill provides that the installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with the hurricane protection requirements is not considered a material alteration or substantial addition to the common elements or association property.

Under the bill, a vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of the condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at the owners' address as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The board's failure to record the certificate or to send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners.

The bill allows the board to require that unit owners adhere to an existing unified building scheme regarding the external appearance of the condominium.

Regarding a unit owner's responsibility for the costs of installation or removal of hurricane protection, the bill provides that a unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection if the unit owner installed the hurricane protection and its removal is necessary for the maintenance, repair, or replacement of the condominium property or association property for which the association is responsible. If such removal or reinstallation is completed by the association, the association may not charge that cost to the unit owner. If such reinstallation of removal is completed by the unit owner, the association must reimburse the unit owner for the cost or apply the cost as a credit toward future assessments.

Under the bill, the board must determine if the removal or reinstallation of hurricane protection is the responsibility of the unit owner, including costs, and if such removal or reinstallation is

completed by the association, then the costs incurred by the association may be charged to the unit owner. If the association charges a unit owner for the removal or installation of hurricane protection, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S., for the collection of assessments.

The bill amends s. 718.115(1)(e)1., F.S., to delete the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and must be collected as a common expense if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Additionally, s. 718.115(1)(e)1., F.S., is also amended to provide that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

The bill amends s. 718.115(1)(e)2., F.S., to delete the requirement that a unit owner who previously installed hurricane shutters in accordance with s. 718.113(5), F.S., that comply with the current applicable building codes receive a credit when the shutters are installed. A unit owner who has previously installed such items must receive a credit when the impact glass or code-compliant windows or doors are installed.

The provision is revised to provide that a credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The bill adds that the credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection and that expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

SLAPP Defamation Law Suits – Condominiums

Present Situation

Section 718.1224, F.S., prohibits "strategic lawsuits against public participation" or "SLAPP suits," and provides legislative findings that such lawsuits are against the public interest. A SLAPP lawsuit occurs when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.[84]

Under s. 718.1224, F.S., governmental entities, business organizations, and individuals are prohibited from filing or causing to be filed any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State

[84] *See* s. 718.1224(1), F.S., providing legislative intent.

Constitution. Current law does not specifically prohibit condominium associations from engaging in SLAPP suits, instead the prohibition generally applies to governmental entities, business organizations, and individuals.

Section 718.1224, F.S., provides that unit owners have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney's fees and costs. Governmental entities, business organizations, and individuals are barred from expending funds in prosecuting a SLAPP suit against a unit owner.[85]

Effect of Proposed Changes

The bill amends s. 718.1224, F.S., to revise the SLAPP suits prohibition to protect condominium unit owners' exercise of their free speech rights before their association. The bill specifically prohibits condominium associations from engaging in a SLAPP suit.

The bill also amends s. 718.1224, F.S., to prohibit condominium associations from:

- Retaliating against a unit owner, such as by increasing a unit's assessments, discriminatorily decrease services to a unit owner, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

The unit owner must have acted in good faith and not for any improper purposes, such as to harass or cause unnecessary delay, for frivolous purposes, or needless increase in the cost of litigation in order for the unit owner to raise the defense of retaliatory conduct. The bill provides examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

- The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;
- The unit owner has organized, encouraged, or participated in a unit owners organization;
- The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;
- The unit owner has exercised his or her rights under ch. 718, F.S.;
- The unit owner has complained to the association or any of its representatives for their failure to comply with ch. 718, F.S., or ch. 617, F.S.; or
- The unit owner has made public statements critical of the operation or management of the association.

[85] A similar prohibition against SLAPP suits by homeowners' associations is contained in s. 720.304(4), F.S.

The bill allows the unit owner to present evidence of retaliatory conduct as a defense in any action brought against him or her for possession.

Electronic Voting – Condominiums

Present Situation

Sections 718.128 and 719.129, F.S., relating to electronic voting in condominium and cooperative associations, respectively, allow these associations to conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, in writing, to online voting and the specified requirements are met, including:

- The association provides each unit owner with:
  - A method to authenticate the unit owner's identity to the online voting system.
  - For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.
  - A method to confirm, at least 14 days before the voting deadline, which the unit owner's electronic device can successfully communicate with the online voting system.
- The association uses an online voting system that is:
  - Able to authenticate the unit owner's identity.
  - Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.
  - Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.
  - For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.
  - Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

Unit owners who vote electronically may be counted as attending the meeting for the purpose of determining a quorum.[86] A unit owner may opt-out of his or her consent to vote electronically.[87]

Effect of Proposed Changes

The bill amends ss. 718.128 and 719.129, F.S., relating to electronic voting in condominium and cooperative associations, respectively, to allow condominium and cooperative unit owners to consent to electronic voting in condominium and cooperative association elections by using an electronic means of consent.

Conflicts of Interests – Condominiums

Present Situation

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a

[86] Sections 718.128(3) and 719.129(3), F.S., relating to electronic voting in condominium and cooperative associations, respectively.
[87] Section 718.128(5) and 719.129(5), F.S., relating to electronic voting in condominium and cooperative associations, respectively.

condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present. A director or officer who is a party to, or has an interest in, the activity that may be a potential conflict of interest must leave the board meeting during the discussion and vote, and must recuse himself or herself from the vote.

Effect of Proposed Changes

The bill amends s. 718.3027, F.S., to provide that the attendance of an officer or director at the meeting of the board is sufficient to constitute a quorum for the meeting and for the vote taken in his or her absence when the director is required to leave the room during the discussion and vote on a contract in which the director, or his relative, has an interest.

Nonpayment of Monetary Obligations

Present Situation

Section 718.303(5), F.S., allows an association to suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. The association must send the unit owner proof of such obligation 30 days before such suspension takes effect. The suspension ends when the full payment of all past due obligations currently due the association are paid.

Effect of Proposed Changes

The bill amends s. 718.303(5), F.S., to require an association to notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation at least 90 days before an election.

Division of Condominiums, Cooperatives, and Mobile Homes

Present Situation

Section 718.501, F.S., provides the investigative and enforcement authority of the Division of Condominium, Timeshares, and Mobile Homes (division). The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the association.[88] After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.[89]

[88] *Id.*
[89] Section 718.501(1), F.S.

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.[90]

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.[91]

Effect of Proposed Changes

The bill amends s. 718.501(1), F.S., to delete the limitation on the division's jurisdiction after turnover. The bill expands the division's post-turnover jurisdiction to include:

- Procedures and records related to financial issues, including annual financial reporting under s. 718.111(13), F.S., assessments for common expenses, fines, and commingling of reserve and operating funds under in s. 718.111(14), F.S., use of debit cards for other than intended purposes under s. 718.111(15), F.S., the annual operating budget and the allocation of reserve funds under s. 718.112(2)(f), F.S., financial records, under s. 718.111(12)(a)11, F.S., and any other record necessary to determine the revenues and expenses of the association;
- Elections, including election and voting requirements under s. 718.112(2)(b) and (d), F.S., recall of board members under 718.112(2)(l), F.S., electronic voting under s. 718.128, F.S., and elections that occur during an emergency under s. 718.1265(1)(a), F.S.;
- The maintenance of and unit owner access to association records under s. 718.111(12), F.S.;
- Allegations of criminal violations under ch. 718, F.S.;
- The procedural aspects of meetings, such as unit owner meetings, quorums, voting requirements, proxies, board of administration meetings, and budget meetings under s. 718.112(2), F.S.;
- Disclosure of conflicts of interest under s. 718.111(1)(a), F.S., and s. 718.3027, F.S., including limitations contained in s. 718.111(3)(f), F.S.;
- Removal of a board director or officer under ss. 718.111(1)(a) and (15), F.S., and s. 718.112(2)(p) and (q), F.S.;
- The procedural completion of structural integrity reserve studies under s. 718.112(2)(g), F.S.; and
- Any written inquiries by unit owners to the association relating to such matters, including written inquiries under s. 718.112(2)(a)2., F.S.

In addition, the bill:

- Authorizes the division to issue citations and adopt rules to provide citation bases and citation procedures in accordance with the division's authority, responsibilities, and duties outlined in s. 718.501, F.S.

[90] Sections 718.501(1), F.S.
[91] *Id.*

- Authorizes the division to impose a civil penalty for a violation of ch. 617, F.S., relating to corporations not for profit.
- Requires the division refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman,[92] may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.

Condominium Ombudsman

Present Situation

The Office of the Ombudsman (condominium ombudsman) within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the condominium ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.

The condominium ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.

Effect of Proposed Changes

The bill amends s. 718.5011(2), F.S., to provide for the appointment of the Condominium Ombudsman by the secretary of DBPR instead of by the Governor, and deletes the requirement that the ombudsman must be an attorney.

Limitations on Actions by Condominium and Cooperative Associations

Present Situation

Statute of limitations for any actions in law or equity that a condominium association or a cooperative association may have do not begin to run until the unit owners have elected a majority of the members of the board of administration.[93] A statute of limitations provides a

[92] Sections 718.5011-50152, F.S., relate to the Office of the Ombudsman within the division. The ombudsman is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints. The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.

[93] Section 718.124, F.S.

specific time period in which an individual must bring a lawsuit, measured from the time of accrual of the cause of action.[94] This means that the specific time period for such cause of action does not begin to run until the turnover of control of the association "…passes from the developer to the unit owners."[95] Currently, this turnover provision is not applicable to statutes of repose for any actions in law or equity.[96] If a defect occurs during construction of a condominium or cooperative but turnover does not happen for years after an event triggering the statute of repose, the association may be time-barred from filing suit on the defect claim even if the statute of limitations had only just begun to run because the statute of repose may have started to run well before the statute of limitations.

A statute of repose bars the filing of a lawsuit after a fixed period of time passes following a specific act, which act is unrelated to the cause of action's accrual or the injury's discovery, even if this period ends before the plaintiff is injured.[97] Further, a statute of repose eliminates the underlying substantive right of action, not just the available civil remedy, upon expiration of the statutorily-specified filing period.[98] Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed, which encourages diligence in the prosecution of claims, eliminates the potential for abuse resulting from a stale claim, and fosters finality in liability.[99]

Construction Defect Claims

A "construction defect" is a deficiency in, or arising out of, the design, specifications, surveying, planning, supervision, or observation of construction, or the construction, repair, alteration, or remodeling of real property[100] resulting from:

- Defective material, products, or components used in construction or remodeling;
- A Florida Building Code violation;
- A failure of real property's design to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction in place at the time of construction.[101]

[94] Statute of Limitations, Black's Law Dictionary (11th ed. 2019).
[95] *Charley Toppino & Sons, Inc. v. Seawatch at Marathon Condo. Ass'n, Inc.*, 658 So. 2d 922, 925 (Fla. 1994). The intention for this provision was "to lengthen the limitations period for particular causes of action [in order] to prevent a developer from retaining control over an association long enough to bar a potential cause of action which the unit owners might otherwise have been able and willing to pursue." *Id.*, quoting *Regency Wood Condominium, Inc. v. Bessent, Hammack & Ruckman, Inc.*, 405 So.2d 440 (Fla. 1st DCA 1981).
[96] *Sabal Chase Homeowners Ass'n, Inc. v. Walt Disney World Co.*, 726 So. 2d 796, 798 (Fla. 3d DCA 1999).
[97] Legal Information Institute, *Statute of Repose*, https://www.law.cornell.edu/wex/statute_of_repose (last visited Feb. 27, 2024); *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).
[98] *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997).
[99] *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).
[100] "Real property" means land that is improved and the improvements thereon, including fixtures, manufactured housing, or mobile homes. Section 558.002(8), F.S.
[101] Section 558.002(5), F.S.

Applicable Statutes of Limitations and Repose

Section 95.11(3)(b), F.S., establishes the time periods within which a construction defect cause of action must be brought. Specifically, for a patent defect,[102] an action must generally be filed within four years from the date of the earliest of the:

- Owner's actual possession;
- Issuance of a certificate of occupancy;
- Construction's abandonment, if not completed; or
- Completion or termination of the engineer's, architect's, or contractor's contract with his or her employer.[103]

However, for a latent defect,[104] the four-year statute of limitations begins to run on the date the defect was discovered or should have reasonably been discovered with due diligence. In any event, the statute of repose in this section provides that in no case may a construction defect claim be filed more than seven years after the earliest of any event triggering the statute of limitations for patent defects. In other words, a construction defect claim is time-barred after seven years from the earliest of any of the events listed above even where the defect is not yet discovered or could not reasonably have been discovered with the exercise of due diligence.

At the point of turnover in a condominium or cooperative, Florida law requires the developer to provide the association with a written inspection report; however, this report is limited in scope to the maintenance, condition, replacement costs, and useful life of specified components and thus may not provide the association with any insight into the existence of a construction defect.[105] It is the responsibility of the association to conduct an exhaustive property evaluation and determine if construction defects exist.[106]

Effect of Proposed Changes

The bill amends s. 718.124, F.S., to include the statute of repose, so that the statute of repose also begins to run once the unit owners elect the association board.

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[102] A "patent defect" is a defect that is reasonably apparent or known to the owner. *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003); Legal Information Institute, *Patent Defect*, https://www.law.cornell.edu/wex/patent_defect (last visited Feb. 27, 2024).

[103] "Completion of the contract" means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made. Section 95.11(3)(c), F.S.

[104] A "latent defect" is a hidden defect that cannot be discovered by reasonable and customary observation or inspection, and of which the owner has no knowledge. *Alexander*, 837 So. 2d at 1058; Legal Information Institute, *Latent Defect*, https://www.law.cornell.edu/wex/latent_defect#:~:text=A%20hidden%20or%20concealed%20defect,and%20customary%20observation%20or%20inspection (last visited Feb. 27, 2024).

[105] Sections. 718.301(4)(p) and 719.301(4)(p), F.S.

[106] In any claim against a developer, if a defect is found in a condominium's design, construction, or structural elements, or in any mechanical, plumbing, electrical, fire protection, or other element that requires a licensed professional for design or installation under chs. 455, 471, 481, 489, or 633, F.S., the defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or other individual or entity. A condominium or cooperative association should also reference its governing documents to determine whether any restrictions exist that would impair its right to initiate litigation. Section 718.301(7), F.S.

Reports to the Legislature and Governor

Present Situation

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[107]

The Florida Building Commission (commission) was statutorily created to implement the Building Code. The commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.[108] The commission reviews several International Codes published by the International Code Council,[109] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated, and adopts an updated Building Code every three years.[110]

Effect of Proposed Changes

Florida Building Commission
The bill requires the Florida Building Commission to submit a report by December 1, 2024, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, of its review of the standards to prevent water intrusion through the tracks of sliding glass doors.

DBPR
The bill requires the division to submit, by January 1, 2025, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the provision.

Appropriation

For the 2024-2025 fiscal year, the bill appropriates $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund to the DBPR, and 65 full-time equivalent positions with an associated salary rate of 3,180,319 are authorized, for the purpose of implementing the provisions of this bill.

[107] Section 553.72(1), F.S.
[108] Section 553.74, F.S.
[109] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, available at https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 27, 2024).
[110] Section 553.73(7), F.S.

Effective Date

Except as otherwise provided, the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

For the 2024-2025 fiscal year, the bill appropriates $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund to the Department of Business and Professional Regulation, and 65 full-time equivalent positions with associated salary rate of 3,180,319 are authorized, for the purpose of implementing the provisions of this bill

The Department of Business and Professional Regulation (DBPR) states it will incur additional expenses related to the number of positions required to handle the workload needed to implement the bill. The DBPR estimates it will need 65 additional staff and associated costs of $7,416,268 ($6,122,390 recurring and $1,293,879 nonrecurring) from the General Revenue Fund for Fiscal Year 2024-2025.

The Division of Condominiums, Timeshares, and Mobile Homes (division) and the Office of the General Counsel both identified the need for additional positions to address the possible increases of violations and administrative complaints received by the DBPR. The additional staff costs are as follows:

- Office of the General Counsel: 8 positions with $774,930 of Salaries and Benefits, $118,129 of Expense, and $2,880 of Transfer to DMS budget authority.
- Division of Regulation: 4 positions with $259,346 of Salaries and Benefits, $56,910 of Expense, $50,000 of Acquisition of Motor Vehicles, $6,000 of Operation of Motor Vehicles, and $1,440 of Transfer to DMS-HR Services in budget authority.
- Division of Condominiums, Timeshares, and Mobile Homes: 53 positions with $3,783,621 of Salaries and Benefits, $1,110,777 of Expense, $393,156 of Contracted Services, $750,000 of Acquisition of Motor Vehicles, $90,000 of Operation of Motor Vehicles, and $19,080 of Transfer to DMS budget authority.

The bill creates new criminal penalties for violations relating to the management of a condominium association. This may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.4334, 468.436, 553.899, 718.103, 718.104, 718.111, 718.112, 718.113, 718.115, 718.121, 718.1224, 718.128, 718.202, 718.301, 718.3027, 718.303, 718.501, 718.5011, 718.503, 718.504, 718.618, 719.106, 719.129, 719.301, and 719.618.

This bill creates the following sections of the Florida Statutes: 468.4335, 553.8445, and 718.407.

This bill creates undesignated sections of Florida law.

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 Fiscal Policy on February 27, 2024:

- The committee substitute makes the following substantive changes to the bill:
- Provides conditions, including disclosure requirements in sales contracts and redefining the term “condominium,” for the creation of condominiums within a portion of a building or within a multiple parcel building.

- Regarding timeshare condominiums, applies the time periods for return of records by a community association manager (CAM) that are applicable to timeshare plans, and exempts timeshare condominiums from the requirement to submit a certificate of compliance with the director education requirements with the Division of Condominiums, Timeshare, and Mobile Homes (division).
- Requires a previously disclosed conflict of interest in an existing community management contract to, upon renewal, be noticed and voted on in accordance with the conflict disclosure process in the bill.
- Limits the requirement for boards to consider multiple bids from other third-party providers of such goods or services to only those goods or services that exceed $2,500.
- Prohibits access to unit owner email addresses and facsimile numbers without a unit owner's consent, and prohibits the sale or sharing of such personal information to third parties.
- Removes from the bill the requirement for certain condominiums to be equipped with a reusable devise to prevent water intrusion through the tracks of sliding glass doors as a condition for a certificate of completion or occupancy.
- Requires the Florida Building Commission to perform a study and report, by December 1, 2024, to the Governor, the presiding officers of the Legislature, and others on the standards to prevent water intrusion through the tracks of sliding glass doors, including considerations of devises designed to prevent such water intrusion.
- Includes board member education certificates as an official record.
- Requires official records to be organized.
- Revises the director education requirements to include instruction on milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.
- Removes from the bill the exemption from the structural integrity reserve study (SIRS) requirements for a four-family dwelling with three or fewer habitable stories above ground.
- Requires condominium associations to notify the division within 45 days after the structural integrity reserve study is completed, requires the division to maintain an online database of associations that have completed the SIRS, and requires the division to include an internet link to a list of associations that have completed the SIRS in its annual report.
- Provides that the statute of limitations and statute of repose for certain actions available to a condominium association or a cooperative association, will not begin to run until the unit owners have elected a majority of the members of the board of administration.
- Effective October 1, 2024, requires a nondeveloper seller of a unit to give, to a prospective purchaser of a unit, a copy of the annual financial statement and annual budget of the condominium association (instead of the "financial information required by s. 718.111, F.S."
- Revises the post-turnover jurisdiction of the division to include procedure and records related to financial issues under specified provisions, elections under specified provisions (including electronic voting), allegations of criminal violations under ch. 718, F.S., procedural aspects of meetings under specified provisions, disclosure of

conflicts of interest, removal of directors and officers for specified criminal violations, and any written inquiries by unit owners to the association.
- Authorizes the division to issue citations and adopt rules to provide for citation bases and citation procedures.
- Authorizes the division to provide a template for director education certificates.
- Authorizes the division to request access to an association's website to investigate complaints related to unit owner access to official records on such website.
- Requires associations to certify such compliance with director education requirements on a form provided by the division and deletes the requirement in the bill to submit the certificate along with the payment of the annual fee.
- Provides an appropriation.

CS/CS by Appropriations Committee on Agriculture, Environment and General Government on February 13, 2024:
The committee substitute makes several technical and clarifying changes to the bill and the following substantive revisions to the bill:
- Deletes the requirements for the Division of Condominium, Timeshares, and Mobile Homes (division) to provide education programs for director and officer, and to pay for such programs even if performed by a division-approved provider.
- Deletes the requirement for the division to conduct random audits of condominium associations' compliance with the requirement to maintain certain records on their websites.
- Revises the division's post-turnover jurisdiction to include only allegations of criminal violations under ch. 718, F.S., and the removal of directors and officers who have been indicted or charged by information under s. 718.112(2)(q), F.S.
- Removes from the bill all the provisions related to allowing associations to invest reserve funds, and impose contingent special assessments based on a line of credit.
- Exempts four-family dwelling with three or fewer habitable stories above ground from the milestone inspection and structural integrity reserve study (SIRS) requirements.
- Requires all residential dwellings to be equipped with a reusable device to prevent water intrusion through the tracks of an exterior sliding glass door as a condition for a building permit for a new or existing dwelling if the work involves a sliding glass door, and is a condition for the milestone inspection.
- Removes duplicative provisions stating that a director or an officer who commits specified crimes is deemed removed from office and a vacancy declared.
- Defines the term "kickback."
- Deletes the requirement for associations to give members a copy of the accountant's management letter or opinion letter for the financial statement.
- Clarifies the requirement for boards to meet at least quarterly, to provide that members have a right to ask questions with respect to reports on the status of construction or repair projects, the status of revenues and expenditures, and other issues affecting the condominium.
- Requires that the officer and director education curriculum be at least four hours long, specifies the topics that must be addressed, including fiduciary duty and SIRS requirements, and permits associations to pay for directors' education expense.

- Deletes the extension of time to complete the SIRS if the association has a contract to perform a SIRS if the SIRS cannot reasonably be completed before the December 31, 2024 deadline.
- Allows associations to pause reserve funding, with the approval of the majority of the members, if the entire building is unsafe and uninhabitable because of a natural disaster.
- Provides that the provision in s. 718.113(5)(d), F.S., relating to hurricane protection, applies unless the declaration of condominium recorded on or before July 1, 2024 provides otherwise.
- Provides for the appointment of the condominium ombudsman by the secretary of the Department of Business and Professional Regulation instead of by the Governor, and deletes the requirement that the ombudsman be an attorney.

CS by Regulated Industries on January 22, 2024:
The committee substitute makes several technical and clarifying changes to the bill and following substantive revisions to the bill (unless otherwise stated all revisions relate to condominium associations):

- Changes the title from an act relating to condominium and cooperative association to an act relating to community associations.
- Revises for clarity the requirements that condominium association managers (CAMs) and firms return documents to the association to provide that the CAM may retain records for up to 20 days after their contract is terminated in order to complete an ending financial statement or report.
- Revises the requirements for CAMs to disclose a conflict of interest to:
  - Require the board to solicit multiple bids (instead of at least three bids) if the association considers a bid for goods or services for which a CAM has a conflict of interest;
  - Delete the provision allowing association members to void a contract; and
  - Provide that the procedures for resolving conflicts of interest in the bill do not apply to activities or the provision of goods and services that are disclosed in the management services contract.
- Regarding the requirement in the bill related to the maintenance of official records:
  - Deletes the requirement for associations to maintain "other substantiating documentation" which is not necessary;
  - Deletes the requirement in the bill that official records be maintained in an organized manner;
  - Provides that the obligation to maintain official records includes a good faith obligation to recover records as may be reasonably possible in the event records are lost, destroyed, or otherwise unavailable;
  - Provides that associations may satisfy a request for access to records by making the records available for download on the association website or through an application on a mobile device; and
  - Deletes the requirement that the checklist made in response to a records request be accompanied by a sworn affidavit.
- Provides a first degree misdemeanor criminal offense for a person to knowingly or intentionally deface or destroy required accounting records or knowingly and

intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members.

- Provides that officers and directors charged with the criminal violation created in the bill are deemed removed from office and a vacancy declared.
- Requires that meetings of the board must meet at least once each quarter instead of four times a year.
- Revises the requirement in the bill that copies of contracts being considered by the board must be provided to the unit owner with the meeting notice, to allow the copies to be made available for download on the association website or through an application on a mobile device.
- Extends the period associations must retain a copy of an officer or director's educational certificate from 5 years to 7 years.
- Provides an extension of the deadline for completion of a structural integrity reserve study if the condominium or cooperative association has entered into a contract for the performance of the study and the study cannot reasonably be performed or completed by December 31, 2024. The study still must be completed by December 31, 2026.
- Includes contingent special assessments and any line of credit for which a contingent special assessment may be imposed in the list of information that must be included in the estoppel certificate.
- Deletes the requirement in the bill for the recording of special assessments in the public record.
- Deletes the requirement that a notice of such obligation must also be provided to the unit owner at least 90 days before a vote of the members (instead of before an election or vote of the members).
- Allows unit owners to consent to electronic voting in condominium and cooperative association elections by using an electronic means of consent.
- Authorizes the Division of Condominium, Timeshares, and Mobile Homes to impose a civil penalty for a violation of ch. 617, F.S., relating to corporations not for profit.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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	.	

The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability.—

(3) A community association manager or a community association management firm shall return all community association official records within its possession to the

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community association within 20 business days after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request for return of the official records, whichever occurs first. A notice of termination of a contractual agreement to provide community association management services must be sent by certified mail, return receipt requested, or in the manner required under such contractual agreement. The community association manager or community association management firm may retain, for up to 20 business days, those records necessary to complete an ending financial statement or report. If an association fails to provide access to or retention of accounting records to prepare an ending financial statement or report, the community association manager or community association management firm is relieved from any further responsibility or liability relating to the preparation of such ending financial statement or report. Failure of a community association manager or a community association management firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that the community association manager or the community association management firm willfully failed to comply with this subsection. A community association manager or a community association management firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the



community association or receipt of a written request from the association for return of the records, whichever occurs first. However, related to a timeshare plan licensed under chapter 721, the time periods in s. 721.14(4)(b) are applicable.

Section 2. Section 468.4335, Florida Statutes, is created to read:

468.4335 Conflicts of interest.—

(1) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, must provide a written disclosure to the board of a community association of any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

(a) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, enters into a contract with the association for goods or services, other than community association management services.

(b) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, holds an interest in or receives compensation or any thing of value from a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into


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a contract or other transaction with the association.

(2) If the association receives and considers a bid to provide a good or service that exceeds $2,500, other than community association management services, from a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, the association must also solicit multiple bids from other third-party providers of such good or service.

(3) If a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, proposes to engage in an activity that is a conflict of interest as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda of the next board of administration meeting. The disclosures of a possible conflict of interest must be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all directors present. At the next regular or special meeting of the members, the existence of the conflict of interest and the contract or other transaction must be disclosed to the members. If a community association manager or community management firm has previously disclosed a conflict of interest in an existing management contract entered into between the board of directors and the community association manager or management firm, the


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conflict of interest does not need to be additionally noticed and voted on during the term of the contract between the community association and the community association manager or management firm, but must be noticed and voted on in accordance with this provision upon renewal.

(4) If the board finds that a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, has violated this section, the association may cancel its community association management contract with the community association manager or the community association management firm. If the contract is canceled, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

(5) If an association enters into a contract, other than a contract for community association management services, with a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, which is a party to or has an interest in an activity that is a possible conflict of interest as described in subsection (1) and that activity has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section, the contract is voidable and terminates upon the association filing a written notice terminating the contract.


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(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

Section 3. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of ~~any provision of~~ this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Failing to disclose any conflict of interest as required by s. 468.4335.

8. Violating ~~any provision of~~ chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

(4) When the department finds any community association


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manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

Section 4. Subsection (4) of section 553.899, Florida Statutes, is amended to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(4) The milestone inspection report must be arranged by a condominium or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association.


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This section does not apply to a single-family, two-family, ~~or~~ three-family, or four-family dwelling with three or fewer habitable stories above ground.

Section 5. Present subsections (19) through (32) of section 718.103, Florida Statutes, are redesignated as subsections (20) through (33), respectively, a new subsection (19) is added to that section, and subsection (1) of that section is amended, to read:

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

(1) "Alternative funding method" means a method approved by the division for funding the capital expenditures and planned ~~deferred~~ maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.

(19) "Hurricane protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

Section 6. Effective October 1, 2024, subsection (14) of section 718.103, Florida Statutes, is amended to read:

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

(14) "Condominium property" means the lands, leaseholds, improvements, any ~~and~~ personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous, which ~~that~~ are subjected to condominium ownership~~, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection~~


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~~with the condominium~~.

Section 7. Paragraph (p) of subsection (4) of section 718.104, Florida Statutes, is added to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(4) The declaration must contain or provide for the following matters:

(p) For both residential condominiums and mixed-use condominiums, a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

Section 8. Effective October 1, 2024, paragraph (b) of subsection (4) of section 718.104, Florida Statutes, is amended to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(4) The declaration must contain or provide for the following matters:

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium." Condominiums created within a portion of a building or within a multiple parcel building shall include the name by which the condominium is to be identified and be followed by "a condominium within a portion of a building or within a multiple parcel building."


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Section 9. Paragraph (a) of subsection (1), paragraph (h) of subsection (11), and subsections (12), (13), and (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept a kickback. As used in this paragraph, the term "kickback" means any thing or service of value ~~or kickback~~ for which consideration has not been provided for an officer's, a director's, or a manager's ~~his or her~~ own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts a ~~any thing or service of value or~~ kickback commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil penalty pursuant to s. 718.501(1)(d) ~~and, if applicable, a criminal penalty as provided in paragraph (d)~~. However, this paragraph does not prohibit an


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officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. Upon receipt of a complaint, the division shall monitor compliance with this paragraph and may issue fines and penalties established by the division for failure of an association to maintain the required insurance policy or fidelity bond. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:


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1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. ~~The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided~~ In accordance with sub-subparagraph (c)5.e. ~~(c)3.e.~~ , the e-mail addresses and facsimile numbers are accessible to unit owners only if consent to receive notice by electronic transmission is provided, the unit owner has expressly indicated that such personal information can be shared with other unit owners, and the unit owner has not provided the association with a request to opt-out of such dissemination with other unit owners. An association must ensure that such e-mail


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addresses and facsimile numbers are used only for the business operation of the association and may not be sold or shared with outside third parties. If such personal information is included in documents released to third parties other than unit owners, the association must redact such personal information before the document is disseminated. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices unless disclosure was made with a knowing or intentional disregard of the protected nature of such information.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.


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b. All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.

c. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

d.~~c.~~ All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

e.~~d.~~ All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the


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association for 15 years after receipt of the report.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. A copy of all building permits.

19. A copy of all satisfactorily completed board member educational certificates.

20. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. In the event that the records are lost, destroyed, or otherwise unavailable, the obligation to maintain official records includes a good faith obligation to recover those records as may be reasonably possible. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph and paragraph (c) may be complied with by having a copy of the


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official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet as provided under paragraph (g) or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in compliance with this chapter unless the association has an affirmative duty not to disclose such information under this chapter.

(c)1.a. The official records of the association are open to inspection by any association member and any person authorized by an association member as a representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member and of the person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to


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official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. If the requested records are posted on an association's website, or are available for download through an application on a mobile device, the association may fulfill its obligations as provided under this paragraph by directing all persons authorized to request access to official records pursuant to this paragraph to the website or mobile device application.

b. In response to a written request to inspect records, the association must simultaneously provide a checklist to the requestor of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist provided under this sub-subparagraph for 7 years. An association delivering a checklist pursuant to this sub-subparagraph creates a rebuttable presumption that the association has complied with this paragraph.

2. Any director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates subparagraph 1. with the intent of causing harm to the association or one or more of its members commits a misdemeanor of the second degree, punishable as provided in s.


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775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period.

3.~~2.~~ Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

5.~~3.~~ The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device,


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including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.


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e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).


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(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain


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timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.


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b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

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j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information


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restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall deliver ~~mail~~ to each unit owner, by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements ~~at the address last furnished to the association by the unit owner, or hand deliver to each unit owner~~, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner,



without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association’s total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less


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than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, planned ~~deferred~~ maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;


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2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years~~, except that the approval may also be effective for the following fiscal year~~. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her


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a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014. For the purposes of this paragraph, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written


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budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61~~.

Section 10. Effective January 1, 2026, paragraph (g) of subsection (12) of section 718.111, Florida Statutes, as amended by this act, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(g)1. ~~By January 1, 2019,~~ An association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association’s website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association’s activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association’s website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner’s written request, the association


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must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any



monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a


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structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 11. Paragraphs (c), (d), (f), (g), and (q) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (r) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:


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(c) *Board of administration meetings.*—In a residential condominium association of more than 10 units, the board of administration shall meet at least once each quarter. At least four times each year, the meeting agenda must include an opportunity for members to ask questions. Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items, and the right to ask questions with respect to reports on the status of construction or repair projects, status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an


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emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments.~~

2. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of board meetings must be posted. If there is no condominium property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast


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hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

3. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice, made available for inspection and copying upon a written request from a unit owner, or made available on the association's website or through an application that can be downloaded on a mobile device.

4.~~2.~~ Meetings of a committee to take final action on behalf


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of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

5.~~3.~~ Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as


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described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at


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the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings

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of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner


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and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association’s official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of


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mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery,


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or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. A director of a ~~Within 90 days after being elected or appointed to the~~ board of an association of a residential condominium~~, each newly elected or appointed director~~ shall:

(I) Certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and


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that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may~~

(II) Submit to the secretary of the association a certificate of having satisfactorily completed the educational curriculum administered by the division or a division-approved condominium education provider ~~within 1 year before or 90 days after the date of election or appointment~~. The education curriculum must be least 4 hours long and include instruction on milestone inspections, structural integrity reserve studies, elections, recordkeeping, financial literacy and transparency, levying of fines, and notice and meeting requirements.

Each newly elected or appointed director must submit the written certification and educational certificate to the secretary of the association within 1 year before being elected or appointed or within 90 days after the date of election or appointment. A director of an association of a residential condominium who was elected or appointed before July 1, 2024, shall comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025. The written certification and ~~or~~ educational certificate is valid for 7 years from the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during the 7-year period. A director who is appointed by the developer may satisfy the educational certificate requirement in sub-sub-subparagraph (II) for any


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subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or an appointment to a board in another association within that 7-year period. Additionally, 1 year after submission of the most recent written certification and educational certificate, and annually thereafter, a director of an association of a residential condominium must submit to the secretary of the association a certificate of having satisfactorily completed an educational curriculum administered by a division-approved condominium education provider, relating to any recent changes to this chapter and the related administrative rules, during the past year. The cost of a required educational curriculum and certificate is an expense of the association which the association may pay on behalf of the director or reimburse the director for his or her expense. A director of an association of a residential condominium who fails to timely file the written certification and ~~or~~ educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification and ~~or~~ educational certificate for inspection by the members for 7 ~~5~~ years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification and ~~or~~ educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.


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5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration; unit owner meetings, except unit owner meetings called to recall board members under paragraph (l); and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy


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occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—


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1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and planned ~~deferred~~ maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of planned ~~deferred~~ maintenance expense or replacement cost, and any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining


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useful life and estimated replacement cost or planned ~~deferred~~ maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of planned ~~deferred~~ maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by planned ~~deferred~~ maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by this subsection. For a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less


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reserves than required by this subsection if an alternative funding method has been approved by the division. If the local building official, as defined in s. 468.603, determines that the entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, the board, upon the approval of a majority of its members, may pause the contribution to its reserves or reduce reserve funding until the local building official determines that the condominium building is habitable. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building and its structures are habitable, the association must immediately resume contributing funds to its reserves.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all the


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total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the replacement or planned ~~deferred~~ maintenance costs of the components listed in paragraph (g).

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. A residential condominium association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the


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condominium property that is three stories or higher in height, as determined by the Florida Building Code, which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must


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identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a planned ~~deferred~~ maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 718.301(4)(p)



and (q) for each building on the condominium property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer’s and director’s fiduciary relationship to the unit owners under s. 718.111(1).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery


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at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

10. Within 45 days after receiving the structural integrity reserve study, the association must provide the division with a statement indicating that such study was completed and that the association provided or made such study available to each unit owner in accordance with this section. Such statement shall be provided to the division in the manner provided by the division using a form posted on the division's website.

(q) *Director or officer offenses.*—

1. A director or an officer charged by information or indictment with any of the following crimes is deemed removed from office and a vacancy declared:

a. Forgery of a ballot envelope or voting certificate used in a condominium association election as provided in s. 831.01.

b. Theft or embezzlement involving the association's funds or property as provided in s. 812.014.

c. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.


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e. Any criminal violation under this chapter.

2. The board shall fill the vacancy in accordance with paragraph (d) ~~a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law~~ until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or an officer of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(r) *Fraudulent voting activities relating to association elections; penalties.*—

1. A person who engages in the following acts of fraudulent voting activity relating to association elections commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

b. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

c. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or

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attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This sub-subparagraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2. Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

b. Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

c. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest,


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trial, or punishment.

This subparagraph does not apply to a licensed attorney giving legal advice to a client.

3. Any person charged by information or indictment for any of the crimes in this paragraph shall be deemed removed from office and a vacancy declared.

Section 12. Subsection (5) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane ~~shutters and~~ protection; display of religious decorations.—

(5) To protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, this subsection applies to all residential and mixed-use condominiums in this state, regardless of when the condominium is created pursuant to the declaration of condominium. Each board of administration of a residential condominium or mixed-use condominium shall adopt hurricane protection ~~shutter~~ specifications for each building within each condominium operated by the association which may ~~shall~~ include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code. The installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with this subsection is not considered a material alteration or substantial addition to the common elements or association property within the meaning of this section.


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(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium or mixed-use condominium, install or require that unit owners install hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection that complies ~~comply~~ with or exceeds ~~exceed~~ the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date by which the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand deliver a copy of the recorded certificate to the unit owners at the owners' addresses, as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The failure to record the certificate or send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners. ~~However,~~ A vote of the unit owners under this paragraph is not required if the installation, maintenance, repair, and replacement of the hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection, or any exterior windows, doors, or other apertures protected by the hurricane protection, is ~~are~~ the


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responsibility of the association pursuant to the declaration of condominium as originally recorded or as amended, or if the unit owners are required to install hurricane protection pursuant to the declaration of condominium as originally recorded or as amended. If hurricane protection ~~or laminated glass or window film architecturally designed to function as hurricane protection~~ that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit ~~except upon approval by a majority vote of the voting interests~~.

~~(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.~~

(b) ~~(c)~~ The board may operate ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~


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hurricane protection ~~installed pursuant to this subsection~~ without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or ~~and~~ association property. ~~The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.~~

(c) ~~(d)~~ Notwithstanding any other provision in the residential condominium or mixed-use condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by a unit owner which conforms ~~conforming~~ to the specifications adopted by the board. However, a board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.

(d) A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection, including any exterior window, door, or other aperture protected by the hurricane protection, if its removal is necessary for the maintenance, repair, or replacement of other condominium property or association property for which the association is responsible. The board shall determine whether the removal or reinstallation of hurricane protection must be completed by the unit owner or the association. If such removal or reinstallation


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is completed by the association, the costs incurred by the association may not be charged to the unit owner. If such removal or reinstallation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal or reinstallation or the association must apply the unit owner's cost of removal or reinstallation as a credit toward future assessments.

(e) If the removal or installation of hurricane protection, including any exterior windows, doors, or other apertures protected by the hurricane protection is the responsibility of the unit owner, such removal or installation is completed by the association, and the association then charges the unit owner for such removal or installation, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

Section 13. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e)1. Except as provided in s. 718.113(5)(d) ~~The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium.~~


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~~However~~, if the installation of ~~maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection is ~~are~~ the responsibility of the unit owners pursuant to the declaration of condominium or a vote of the unit owners under s. 718.113(5), the cost of the installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by the association is not a common expense and must ~~shall~~ be charged individually to the unit owners based on the cost of installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection appurtenant to the unit. The costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

2. Notwithstanding s. 718.116(9), and regardless of whether ~~or not~~ the declaration requires the association or unit owners to install, maintain, repair, or replace ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection, the ~~a unit~~ owner of a unit where ~~who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of~~

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~~code-compliant~~ hurricane protection that complies ~~comply~~ with the current applicable building code has been installed is excused from any assessment levied by the association or shall receive a credit if ~~when~~ the same type of ~~other code-compliant~~ hurricane protection is installed by the association~~, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit~~. A credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection. However, such unit owner remains responsible for the pro rata share of expenses for ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection. Expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Section 14. Paragraph (a) of subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s.

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718.111(12)(a)11.c. ~~s. 718.111(12)(a)11.b.~~, the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

Section 15. Section 718.1224, Florida Statutes, is amended to read:

718.1224 Prohibition against SLAPP suits; other prohibited actions.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before their condominium association and the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when association members are sued by condominium associations, individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before the board of the condominium association or a governmental entity on matters related to the condominium association. However, it is the public policy of this state that condominium associations, governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in their condominium association and in the state's institutions of government.


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Therefore, the Legislature finds and declares that prohibiting such lawsuits by condominium associations, governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, ~~and~~ ensure the continuation of representative government in this state, and ensure unit owner participation in condominium associations. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; law enforcement agencies; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A condominium association, a governmental entity, a business organization, or an individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the condominium association or the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) A condominium association may not fine, discriminatorily increase a unit owner's assessments or


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discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct described in paragraphs (a)-(f). In order for the unit owner to raise the defense of retaliatory conduct, the unit owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

(a) The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;

(b) The unit owner has organized, encouraged, or participated in a unit owners' organization;

(c) The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;

(d) The unit owner has exercised his or her rights under this chapter;

(e) The unit owner has complained to the association or any of its representatives for their failure to comply with this chapter or chapter 617; or



(f) The unit owner has made public statements critical of the operation or management of the association.

(4) Evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession.

(5) A condominium unit owner sued by a condominium association, governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the condominium association's, governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The condominium association, governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the condominium association's, governmental entity's, business organization's, or individual's response. The court may award the condominium unit owner sued by the condominium association, governmental entity, business organization, or individual actual damages arising from the condominium association's, governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit


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owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney ~~attorney's~~ fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6) ~~(4)~~ Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

(7) Condominium associations may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in paragraphs (3)(a)-(f).

Section 16. Section 718.124, Florida Statutes, is amended to read:

718.124 Limitation on actions by association.—The statute of limitations and repose for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

Section 17. Section 718.128, Florida Statutes, is amended to read:

718.128 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to



the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner’s electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner’s identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide


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that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner’s consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association.

Section 18. Effective October 1, 2024, subsections (1) and (3) of section 718.202, Florida Statutes, are amended to read:

718.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the



developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing concerning residential condominiums, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. With respect to nonresidential condominiums, the developer shall have the option of delivering to the escrow agent a surety bond or an irrevocable letter of credit in an amount equivalent to the aggregate of some or all of all payments up to 10 percent of the sale price received by the developer from all buyers toward the sale price, in all cases the aggregate of initial 10 percent deposits moneys being released secured by a surety bond or irrevocable letter of credit in an equivalent amount. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to


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the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the construction and development of the condominium property in which the unit to be sold is located or the easements and rights appurtenant thereto. For purposes of this subsection, the term "actual costs" includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property or the easements and rights appurtenant thereto. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract that ~~which~~ permits use of the advance payments for these purposes must ~~shall~~ include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the


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place for the signature of the buyer: "ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER."

Section 19. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:



1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 20. Subsections (4) and (5) of section 718.3027, Florida Statutes, are amended to read:

718.3027 Conflicts of interest.—

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, and any ~~or the~~ relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote. The attendance of a director with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in his or her absence on the proposed activity.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the


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association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section or s. 617.0832 ~~s. 718.111(12)(g)~~ is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 21. Subsection (5) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. At least 90 days before an election, an association must notify a unit owner or member that his or her voting rights may be suspended due to a nonpayment of a fee or other monetary obligation. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an



election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

Section 22. Effective October 1, 2024, section 718.407, Florida Statutes, is created to read:

718.407 Condominiums created within a portion of a building or within a multiple parcel building.—

(1) Notwithstanding s. 718.103(12) or s. 718.108(1), a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), as provided in this section.

(2) Notwithstanding s. 718.103(12) or s. 718.108(1), the common elements of a condominium created within a portion of a building or a multiple parcel building are only those portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

(3) The declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section must specify all of the following:

(a) The portions of the building which are included in the condominium and the portions of the building which are excluded.

(b) The party responsible for maintaining and operating those portions of the building which are shared facilities, and



which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.

(c)1. The manner in which the expenses for the maintenance and operation of the shared facilities will be apportioned. An owner of a portion of a building which is not submitted to the condominium form of ownership, or the condominium association, as applicable to the portion of the building submitted to the condominium form of ownership, must approve any increase in the apportionment of expenses to such portion of the building. The apportionment of the expenses for the maintenance and operation of the shared facilities may be based on any of the following criteria or any combination thereof:

a. The area or volume of each portion of the building in relation to the total area or volume of the entire building, exclusive of the shared facilities.

b. The initial estimated market value of each portion of the building in comparison to the total initial estimated market value of the entire building.

c. The extent to which the owners are permitted to use various shared facilities.

2. This paragraph does not preclude an alternative apportionment of expenses, provided that the apportionment is stated in the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section.

(d) The party responsible for collecting the shared


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expenses.

(e) The rights and remedies that are available to enforce payment of the shared expenses.

(4) The association of a condominium subject to this section has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

(5) Each contract for the sale of a unit in a condominium subject to this section must contain, in conspicuous type, a clause that substantially states:

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM.

BUYER ACKNOWLEDGES:

1) THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS.

2) PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM ARE (OR WILL BE) GOVERNED BY A SEPARATE RECORDED INSTRUMENT. SUCH INSTRUMENT CONTAINS IMPORTANT PROVISIONS AND RIGHTS AND IS (OR WILL BE) AVAILABLE IN PUBLIC RECORDS.

3) THE PARTY THAT CONTROLS THE MAINTENANCE AND


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OPERATION OF THE PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM DETERMINES THE BUDGET FOR THE OPERATION AND MAINTENANCE OF SUCH PORTIONS; HOWEVER, THE ASSOCIATION AND UNIT OWNERS ARE STILL RESPONSIBLE FOR THEIR SHARE OF SUCH EXPENSES.

4) THE ALLOCATION BETWEEN THE OWNERS OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING CAN BE FOUND IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT.

(6) The creation of a multiple parcel building is not a subdivision of the land upon which such building is situated, provided that the land itself is not subdivided.

Section 23. Subsections (1) and (2) of section 718.501, Florida Statutes, are amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1)(a) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to


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turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to:

1. Procedures and records related to financial issues, ~~elections, and~~ including annual financial reporting under s. 718.111(13); assessments for common expenses, fines, and commingling of reserve and operating funds under in s. 718.111(14); use of debit cards for other than intended purposes under s. 718.111(15); the annual operating budget and the allocation of reserve funds under s. 718.112(2)(f); which financial records under s. 718.111(12)(a)11; and any other record necessary to determine the revenues and expenses of the association;

2. Elections, including election and voting requirements under s. 718.112(2)(b) and (d), recall of board members under 718.112(2)(l), electronic voting under s. 718.128, and elections that occur during an emergency under s. 718.1265(1)(a);

3. The maintenance of and unit owner access to association records under s. 718.111(12), allegations of criminal violations under this chapter, the removal of a director or an officer under s. 718.112(2)(q); ~~and~~

4. The procedural aspects of meetings, such as, unit owner meetings, quorums, voting requirements, proxies, board of administration meetings, and budget meetings under s. 718.112(2);

5. Disclosure of conflicts of interest under s. 718.111(1)(a) and s. 718.3027, including limitations contained in s. 718.111(3)(f);

6. Removal of a board director or officer under s.



718.111(1)(a) and (15), and s. 718.112(2)(p) and (q);

7. The procedural completion of structural integrity reserve studies under s. 718.112(2)(g); and

8. Any written inquiries by unit owners to the association relating to such matters, including written inquiries under s. 718.112(2)(a)2.

(b) ~~(a)~~ 1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(c) ~~(b)~~ The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(d) ~~(c)~~ For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is



relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(e) ~~(d)~~ Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community



association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a



receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter, or related rule, or chapter 617. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board


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member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This


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subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112. Upon receipt of the records,


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the division shall provide without charge the produced official records to the unit owner who was denied access to such records.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (s) ~~(r)~~. The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

9. The division may issue citations and promulgate rules to provide for citation bases and citation procedures in accordance with this section.

(f) ~~(e)~~ The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(g) ~~(f)~~ The division may adopt rules to administer and enforce this chapter.

(h) ~~(g)~~ The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(i) ~~(h)~~ The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this


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chapter, as amended, and the rules adopted thereto on an annual basis.

(j) ~~(i)~~ The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(k) ~~(j)~~ The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division shall provide the division-approved provider with the template certificate for issuance directly to the association board of directors members who have satisfactorily completed the requirements under s. 718.112(2)(d). The division may adopt rules to implement this section.

(l) ~~(k)~~ The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(m) ~~(l)~~ The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall


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include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(n) ~~(m)~~ If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status


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of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(o) ~~(n)~~ Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation. The division shall refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or when the division has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

(p) ~~(o)~~ The division director or any officer or employee of the division, and the condominium ombudsman or an employee of the Office of the Condominium Ombudsman, may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the division or the Office of the Condominium Ombudsman under this chapter.

(q) The division may:


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1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(r) ~~(p)~~ The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(s) ~~(q)~~ The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(t) ~~(r)~~ In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(u) If the division receives a complaint regarding access to official records on the association website under s. 718.111(12)(g), the division may request access to the association website and investigate the complaint. The division may implement rules to carry out this provision.

(v) ~~(s)~~ The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in

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accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. After December 31, 2024, the division must include the uniform resource locator for the Internet address to the list of the associations that have completed their structural reserve study under section 718.112(2)(g). The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

(c) On the certification form provided by the division, the directors of the association shall certify that each director of the association has completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b. This certification requirement does not apply to the directors of an association governing a timeshare condominium.

Section 24. Subsection (2) of section 718.5011, Florida Statutes, is amended to read:

718.5011 Ombudsman; appointment; administration.—


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(2) The secretary of the Department of Business and Professional Regulation ~~Governor~~ shall appoint the ombudsman, who~~. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and~~ shall serve at the pleasure of the secretary ~~Governor~~. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

Section 25. Effective October 1, 2024, paragraph (a) of subsection (2) and subsection (3) of section 718.503, Florida Statutes, are amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled,


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at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.

2. Articles of incorporation of the association.

3. Bylaws and rules of the association.

4. An annual financial statement and an annual budget of the condominium association ~~Financial information required by s. 718.111~~.

5. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899, if applicable.

6. The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

7. A copy of the inspection report described in s. 718.301(4)(p) and (q) for a turnover inspection performed on or after July 1, 2023.

8. The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(3) OTHER DISCLOSURES ~~DISCLOSURE~~.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer must ~~shall~~ make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the


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unit.

(b) Sales brochures, if any, must ~~shall~~ be provided to each purchaser, and the following caveat in conspicuous type must ~~shall~~ be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: "ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE." If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure must ~~shall~~ contain the following statement in conspicuous type: "UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES."

(c) If a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by s. 718.407(5).

Section 26. Effective October 1, 2024, section 718.504, Florida Statutes, is amended to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and


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shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; shall state whether the condominium is created within a portion of a building or a multiple parcel building; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must



contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

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1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner’s maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is


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created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that timeshare estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials



of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner’s share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built and a

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summary description of the structural integrity of each building for which reserves are required pursuant to s. 718.112(2)(g).

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.


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(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: "THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM." There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.


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(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: "THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES." Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in


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the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: "RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S)." Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: "THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE."

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.


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(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: "THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER)." Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: "THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD." Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in


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conspicuous type in substantially the following form shall be included: "THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED." Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form: "THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM." Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: "BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM." Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.


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(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the condominium.

(15) If a condominium created on or after July 1, 2000, is or may become part of a multicondominium, the following information must be provided:

(a) A statement in conspicuous type in substantially the following form: "THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION." Immediately following this statement, the location in the prospectus or offering circular and its exhibits where the multicondominium aspects of the offering are described must be stated.

(b) A summary of the provisions in the declaration, articles of incorporation, and bylaws which establish and provide for the operation of the multicondominium, including a statement as to whether unit owners in the condominium will have the right to use recreational or other facilities located or planned to be located in other condominiums operated by the same association, and the manner of sharing the common expenses related to such facilities.

(c) A statement of the minimum and maximum number of condominiums, and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact number will be finally determined.

(d) A statement as to whether any of the condominiums in


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the multicondominium may include units intended to be used for nonresidential purposes and the purpose or purposes permitted for such use.

(e) A general description of the location and approximate acreage of any land on which any additional condominiums to be operated by the association may be located.

(16) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(17) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(18) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an



exhibit.

(19) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(20) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner’s expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly


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to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves for all applicable items referenced in s. 718.112(2)(g).

l. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.


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b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type:

THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association’s estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.


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(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the condominium.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium, the required schedule of unit owners' expenses, and the association's most recent structural integrity reserve study or a statement that the association has not completed a structural



integrity reserve study.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to condominium ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (17).

(q) A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p), as applicable.

(25) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with this chapter.


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(26) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.

(27) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received.

(28) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

Section 27. Subsection (1) of section 718.618, Florida Statutes, is amended to read:

718.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and planned ~~deferred~~ maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed


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and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5



c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount of converter reserves to be funded by the developer for each structure or component shall be based on the age of the structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be


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measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

Section 28. Paragraphs (j) and (k) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days before the start of the association’s fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year’s budget


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shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and planned ~~deferred~~ maintenance. These accounts must include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of planned ~~deferred~~ maintenance expense or replacement cost, and for any other items for which the planned ~~deferred~~ maintenance expense or replacement cost exceeds $10,000. The amount to be reserved must be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or planned ~~deferred~~ maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (k) for which the association is responsible pursuant to the declaration, and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of planned ~~deferred~~ maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by planned ~~deferred~~



maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. For a budget adopted on or after December 31, 2024, a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k). If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for purposes other than the replacement or


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planned ~~deferred~~ maintenance costs of the components listed in paragraph (k).

(k) *Structural integrity reserve study.*—

1. A residential cooperative association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height, as determined by the Florida Building Code, that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or


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verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a planned ~~deferred~~ maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, ~~or~~ three-family, or four-family dwellings with three or fewer habitable stories above ground; any portion or component of a building



that has not been submitted to the cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 719.301(4)(p) and (q) for each building on the cooperative property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer’s and director’s fiduciary relationship to the unit owners under s. 719.104(9).

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9. Within 45 days after receiving the structural integrity reserve study, the association shall distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

Section 29. Section 719.129, Florida Statutes, is amended to read:

719.129 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.


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(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be


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mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner’s consent to online voting is valid until the unit owner opts out of online voting pursuant to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare cooperative association.

Section 30. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer’s expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection



report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 31. Subsection (1) of section 719.618, Florida Statutes, is amended to read:

719.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential cooperative, the developer shall establish planned ~~reserve~~ accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which


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the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof	4	5



	without insulation		
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer


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shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

Section 32. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall complete a review of the website or application requirements for official records under s. 718.111(12)(g), Florida Statutes, and make recommendations regarding any additional official records of a condominium association which should be included in the records maintenance requirement in the statute. The division shall submit the findings of its review to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over chapter 718, Florida Statutes, by January 1, 2025.

Section 33. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall create a database on its website of the associations that have reported the completion of their structural integrity reserve study under section 718.112(2)(g), and under section 719.106(1)(k), by January 1, 2025.

Section 34. For the 2024-2025 fiscal year, the sums of $6,122,390 in recurring and $1,293,879 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Business and Professional Regulation, and 65 full-time


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equivalent positions with associated salary rate of 3,180,319 are authorized, for the purpose of implementing this act.

Section 35. The amendments made to ss. 718.103(14) and 718.202(3), Florida Statutes, and the provisions of s. 718.407(1), (2), and (6), Florida Statutes, are intended to clarify existing law and shall apply retroactively; however, such amendments do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before October 1, 2024.

Section 36. The Florida Building Commission shall perform a study on standards to prevent water intrusion through the tracks of sliding glass doors, including the consideration of devises designed to further prevent such water intrusion. The commission must provide a written report of any recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over chapter 718, Florida Statutes, by December 1, 2024.

Section 37. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to community associations; amending s. 468.4334, F.S.; requiring community associations to


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return official records of an association within a specified period following termination of a contract; specifying the manner of delivery for the notice of termination; authorizing the manager or management firm to retain records for a specified purpose within a specified timeframe; relieving a manager or management firm from responsibility if the association fails to provide access to the records necessary to complete an ending financial statement or report; providing a rebuttable presumption regarding noncompliance; providing penalties for the failure to timely return official records; providing applicability; creating s. 468.4335, F.S.; requiring community association managers and management firms to provide a written disclosure of certain conflicts of interest to the association's board; providing a rebuttable presumption as to the existence of a conflict; requiring an association to solicit multiple bids for goods or services under certain circumstances; providing requirements for an association to approve any contract or transaction deemed a conflict of interest; authorizing the cancellation of a management contract, subject to certain requirements; specifying liability and nonliability of the association upon cancellation of such a contract; authorizing an association to void certain contracts if certain conflicts were not disclosed in accordance with the act; defining the term "relative"; amending s. 468.436, F.S.; revising


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the list of grounds for which the Department of Business and Professional Regulation may take disciplinary actions against community association managers or firms, to conform to changes made by the act; amending s. 553.899, F.S.; revising applicability; amending s. 718.103, F.S.; revising and defining terms; amending s. 718.104, F.S.; revising what must be included in a declaration; requiring that declarations specify the entity responsible for the installation, maintenance, repair, or replacement of hurricane protection; amending s. 718.111, F.S.; defining the term "kickback"; providing criminal penalties for any officer, director, or manager of an association who knowingly solicits, offers to accept, or accepts a kickback; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to monitor compliance and issue fines and penalties for failure of an association to maintain the required insurance policy or fidelity bonding; revising the list of records that constitute the official records of an association; revising maintenance requirements for official records; revising requirements regarding requests to inspect or copy association records; requiring an association to provide a checklist in response to certain records requests; providing a rebuttable presumption regarding compliance; providing criminal penalties for certain violations regarding noncompliance with records requirements; defining the term "repeatedly"; requiring that copies of certain


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building permits be posted on an association's website or application; modifying the method of delivery of certain letters regarding association financial reports to unit owners; conforming a provision to changes made by the act; revising circumstances under which an association may prepare certain reports; revising applicable law for criminal penalties for persons who unlawfully use a debit card issued in the name of an association; defining the term "lawful obligation of the association"; revising the threshold for associations that must post certain documents on their websites or through an application; amending s. 718.112, F.S.; requiring the boards of administration of associations consisting of more than a specified number of units to meet a minimum number of times each quarter; revising requirements regarding notice of such meetings; requiring a director of a board of an association to provide a written certification and complete an educational requirement upon election or appointment to the board; specifying requirements for the education curriculum; requiring the association to bear the costs of the required educational curriculum and certificate; providing transitional provisions; requiring that an association's budget include reserve amounts for planned maintenance, rather than for deferred maintenance; providing that, upon a determination by a specified local building official that an entire condominium building is uninhabitable due to a natural emergency, the board, upon the


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approval of a majority of its members, may pause contribution to reserves or reduce reserve funding for a specified period of time; authorizing an association to expend any reserve accounts held by the association to make the building and its structures habitable; requiring the association to immediately resume contributing funds to its reserve once the local building official determines the building and its structures are habitable; providing that a condominium's structural integrity reserve study may recommend a temporary pause in reserve funding under certain circumstances; revising applicability; requiring an association to distribute copies of a structural integrity reserve study to unit owners or deliver a certain notice to them within a specified timeframe; specifying the manner of distribution or delivery; requiring the association to provide the division with a statement indicating specific information within a specified timeframe after receiving the structural integrity reserve study; revising the circumstances under which a director or an officer must be removed from office after being charged by information or indictment; prohibiting such officers and directors with pending criminal charges from accessing the official records of any association; providing an exception; providing criminal penalties for certain fraudulent voting activities relating to association elections; requiring any person charged to be removed from office


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and a vacancy be declared; amending s. 718.113, F.S.; providing applicability; authorizing, rather than requiring, certain hurricane protection specifications; specifying that certain actions are not material alterations or substantial additions; authorizing the boards of residential and mixed-use condominiums to install or require the unit owners to install hurricane protection; requiring a vote of the unit owners for the installation of hurricane protection; requiring that such vote be attested to in a certificate and recorded in certain public records; providing requirements for such certificate; providing that the validity or enforceability of a vote of the unit owners is not affected if the board fails to record a certificate or send a copy of the recorded certificate to the unit owners; providing that a vote of the unit owners is not required under certain circumstances; prohibiting installation of the same type of hurricane protection previously installed; providing exceptions; prohibiting the boards of residential and mixed-use condominiums from refusing to approve certain hurricane protections; authorizing the board to require owners to adhere to certain guidelines regarding the external appearance of a condominium; revising responsibility for the cost of removal or reinstallation of hurricane protection and certain exterior windows, doors, or apertures in certain circumstances; requiring the board to make a certain determination; providing that costs incurred


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by the association in connection with such removal or reinstallation completed by the association may not be charged to the unit owner; requiring reimbursement of the unit owner, or application of a credit toward future assessments, in certain circumstances; authorizing the association to collect charges if the association removes or installs hurricane protection and making such charges enforceable as an assessment; amending s. 718.115, F.S.; specifying when the cost of installation of hurricane protection is not a common expense; authorizing certain expenses to be enforceable as assessments; requiring that certain unit owners be excused from certain assessments or receive a credit for hurricane protection that has been installed; providing credit applicability under certain circumstances; providing for the amount of credit that a unit owner must receive; specifying that certain expenses are common expenses; amending s. 718.121, F.S.; conforming a cross-reference; amending s. 718.1224, F.S.; revising legislative findings and intent to conform to changes made by the act; revising the definition of the term "governmental entity"; prohibiting a condominium association from filing strategic lawsuits against public participation; prohibiting an association from taking certain action against a unit owner in response to specified conduct; prohibiting associations from expending association funds in support of certain actions against a unit owner; conforming provisions to changes made by the


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act; amending s. 718.128, F.S.; authorizing a condominium association to conduct elections and other unit owner votes through an online voting system if a unit owner consents, either electronically or in writing, to online voting; revising applicability; amending s. 718.202, F.S.; authorizing the director of the Division of Florida Condominiums, Timeshares, and Mobile Homes to accept certain assurances in lieu of a specified percentage of the sale price; authorizing a developer to deliver a surety bond or an irrevocable letter of credit in an amount equivalent to a certain percentage of the sale price; conforming provisions to changes made by the act; making technical changes; amending s. 718.301, F.S.; revising items that developers are required to deliver to an association upon relinquishing control of the association; amending s. 718.3027, F.S.; revising requirements regarding attendance at a board meeting in the event of a conflict of interest; modifying circumstances under which a contract may be voided; amending s. 718.303, F.S.; requiring that a notice of nonpayment be provided to a unit owner by a specified time before an election; creating s. 718.407, F.S.; providing that a condominium may be created within a portion of a building or within a multiple parcel building; providing for the common elements of such condominium; providing requirements for the declaration of condominium and other recorded instruments; authorizing an association to inspect and copy certain



books and records and to receive an annual budget; requiring that a specified statement be included in a contract for the sale of a unit of the condominium; providing that a multiple parcel building is not a subdivision of land if the land is not subdivided; amending s. 718.501, F.S.; revising circumstances under which the Division of Florida Condominiums, Timeshares, and Mobile Homes has jurisdiction to investigate and enforce certain matters; requiring the division to provide official records, without charge, to a unit owner denied access to such records; authorizing the division to issue citations and promulgate rules for such issuance; requiring the division to provide division-approved providers with the template certificate for issuance directly to the association; requiring the division to adopt rules related to the approval of educational curriculum providers; requiring the division to refer suspected criminal acts to the appropriate law enforcement authority; authorizing certain division officials to attend association meetings; authorizing the division to access the association’s website to investigate complaints made regarding access to official records on the association’s website and to develop rules for such access; specifying requirements for the annual certification; requiring an association to explain on the certification the reasons any certification requirements have not been met; requiring an association to complete the certifications within a


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specified timeframe; requiring the association to notify the division when the certification is completed; providing applicability; conforming a provision to changes made by the act; amending s. 718.5011, F.S.; specifying that the secretary of the Department of Business and Professional Regulation, rather than the Governor, shall appoint the condominium ombudsman; amending ss. 718.503 and 718.504, F.S.; requiring certain persons to provide specified disclosures to purchasers under certain circumstances; making technical changes; providing for retroactive applicability; amending s. 718.618, F.S.; conforming a provision to changes made by the act; amending s. 719.106, F.S.; requiring that a cooperative association's budget include reserve amounts for planned maintenance, rather than for deferred maintenance; providing an exception for certain associations to complete a structural integrity reserve study by a certain date; requiring an association to distribute copies of a structural integrity reserve study to unit owners or deliver a certain notice to them within a specified timeframe; specifying the manner of distribution or delivery; conforming provisions to changes made by the act; amending s. 719.129, F.S.; authorizing cooperative associations to conduct elections and other unit owner votes through an online voting system if a unit owner consents, either electronically or in writing, to online voting; revising applicability; amending s.


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719.301, F.S.; revising items that developers are required to deliver to a cooperative association upon relinquishing control of association property; amending s. 719.618, F.S.; conforming a provision to changes made by the act; requiring the division to conduct a review of statutory requirements regarding posting of official records on a condominium association's website or application; requiring the division to submit its findings, including any recommendations, to the Governor and the Legislature by a specified date; providing for retroactive applicability; requiring the division to create a database on its website of the associations that have reported the completion of their structural integrity reserve study by a specified date; providing an appropriation; providing construction; requiring the Florida Building Commission to perform a study on standards to prevent water intrusion through the tracks of sliding glass doors; requiring the commission to provide a written report of such a study to the Governor and Legislature by a specified date; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (Bradley) recommended the following:

Senate Amendment to Amendment (863108)

Delete lines 3506 - 3507
and insert:
three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable

By the Appropriations Committee on Agriculture, Environment, and General Government; the Committee on Regulated Industries; and Senators Bradley, Pizzo, and Osgood

601-03259-24 20241178c2

A bill to be entitled

An act relating to community associations; amending s. 468.4334, F.S.; requiring community associations or successor community association managers and management firms to return official records of an association within a specified period following termination of a contract; specifying the manner of delivery for the notice of termination; authorizing the manager or management firm to retain records for a specified purpose within a specified timeframe; relieving a manager or management firm from responsibility if the association fails to provide access to the records necessary to complete an ending financial statement or report; providing a rebuttable presumption regarding noncompliance; providing penalties for the failure to timely return official records; creating s. 468.4335, F.S.; requiring community association managers and management firms to provide a written disclosure of certain conflicts of interest to the association's board; providing a rebuttable presumption as to the existence of a conflict; requiring an association to solicit multiple competitive bids for goods or services under certain circumstances; providing requirements for an association to approve any contract or transaction deemed a conflict of interest; authorizing the cancellation of a management contract, subject to certain requirements; specifying liability and nonliability of the association upon cancellation of

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601-03259-24 20241178c2

such a contract; authorizing an association to void certain contracts if certain conflicts were not disclosed in accordance with the act; defining the term "relative"; providing applicability; amending s. 468.436, F.S.; revising the list of grounds for which the Department of Business and Professional Regulation may take disciplinary actions against community association managers or firms, to conform to changes made by the act; amending s. 553.8445, F.S.; providing that all residential dwellings must be required to be equipped with a certain reusable device designed for a specified purpose as a condition for the issuance of certain permits and completion of a certain inspection; providing applicability; requiring the Florida Building Commission to adopt certain rules; amending s. 553.899, F.S.; revising applicability; amending s. 718.103, F.S.; revising the definition of the term "alternative funding method" to conform to changes made by the act; defining the term "hurricane protection"; amending s. 718.104, F.S.; requiring that declarations specify the entity responsible for the installation, maintenance, repair, or replacement of hurricane protection; amending s. 718.111, F.S.; defining the term "kickback"; providing criminal penalties for any officer, director, or manager of an association who knowingly solicits, offers to accept, or accepts a kickback; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to monitor compliance and issue fines and penalties for

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failure of an association to maintain the required insurance policy or fidelity bonding; revising the list of records that constitute the official records of an association; revising maintenance requirements for official records; revising requirements regarding requests to inspect or copy association records; requiring an association to provide a checklist in response to certain records requests; providing a rebuttable presumption regarding compliance; providing criminal penalties for certain violations regarding noncompliance with records requirements; defining the term "repeatedly"; requiring that copies of certain building permits be posted on an association's website or application; modifying the method of delivery of certain letters regarding association financial reports to unit owners; conforming a provision to changes made by the act; revising circumstances under which an association may prepare certain reports; revising applicable law for criminal penalties for persons who unlawfully use a debit card issued in the name of an association; defining the term "lawful obligation of the association"; revising the threshold for associations that must post certain documents on their websites or through an application; amending s. 718.112, F.S.; requiring the boards of administration of associations consisting of more than a specified number of units to meet a minimum number of times each quarter; revising requirements regarding notice of such meetings; requiring a director of a board of an

association to provide a written certification and complete an educational requirement upon election or appointment to the board; specifying requirements for the education curriculum; requiring the association to bear the costs of the required educational curriculum and certificate; providing transitional provisions; requiring that an association's budget include reserve amounts for planned maintenance, rather than for deferred maintenance; providing that, upon a determination by a specified local building official that an entire condominium building is uninhabitable due to a natural emergency, the board, upon the approval of a majority of its members, may pause contribution to reserves or reduce reserve funding for a specified period of time; authorizing an association to expend any reserve accounts held by the association to make the building and its structures habitable; requiring the association to immediately resume contributing funds to its reserve once the local building official determines the building and its structures are habitable; providing that a condominium's structural integrity reserve study may recommend a temporary pause in reserve funding under certain circumstances; revising applicability; requiring an association to distribute copies of a structural integrity reserve study to unit owners or deliver a certain notice to them within a specified timeframe; specifying the manner of distribution or delivery; revising the circumstances under which a

director or an officer must be removed from office after being charged by information or indictment; prohibiting such officers and directors with pending criminal charges from accessing the official records of any association; providing an exception; providing criminal penalties for certain fraudulent voting activities relating to association elections; requiring any person charged to be removed from office and a vacancy be declared; amending s. 718.113, F.S.; providing applicability; authorizing, rather than requiring, certain hurricane protection specifications; specifying that certain actions are not material alterations or substantial additions; authorizing the boards of residential and mixed-use condominiums to install or require the unit owners to install hurricane protection; requiring a vote of the unit owners for the installation of hurricane protection; requiring that such vote be attested to in a certificate and recorded in certain public records; providing requirements for such certificate; providing that the validity or enforceability of a vote of the unit owners is not affected if the board fails to record a certificate or send a copy of the recorded certificate to the unit owners; providing that a vote of the unit owners is not required under certain circumstances; prohibiting installation of the same type of hurricane protection previously installed; providing exceptions; prohibiting the boards of residential and mixed-use condominiums from refusing

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to approve certain hurricane protections; authorizing the board to require owners to adhere to certain guidelines regarding the external appearance of a condominium; revising responsibility for the cost of removal or reinstallation of hurricane protection and certain exterior windows, doors, or apertures in certain circumstances; requiring the board to make a certain determination; providing that costs incurred by the association in connection with such removal or reinstallation completed by the association may not be charged to the unit owner; requiring reimbursement of the unit owner, or application of a credit toward future assessments, in certain circumstances; authorizing the association to collect charges if the association removes or installs hurricane protection and making such charges enforceable as an assessment; amending s. 718.115, F.S.; specifying when the cost of installation of hurricane protection is not a common expense; authorizing certain expenses to be enforceable as assessments; requiring that certain unit owners be excused from certain assessments or to receive a credit for hurricane protection that has been installed; providing credit applicability under certain circumstances; providing for the amount of credit that a unit owner must receive; specifying that certain expenses are common expenses; amending s. 718.121, F.S.; conforming a cross-reference; amending s. 718.1224, F.S.; revising legislative findings and intent to conform to changes made by the act; revising

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the definition of the term "governmental entity"; prohibiting a condominium association from filing strategic lawsuits against public participation; prohibiting an association from taking certain action against a unit owner in response to specified conduct; prohibiting associations from expending association funds in support of certain actions against a unit owner; conforming provisions to changes made by the act; amending s. 718.128, F.S.; authorizing a condominium association to conduct elections and other unit owner votes through an online voting system if a unit owner consents, either electronically or in writing, to online voting; revising applicability; amending s. 718.301, F.S.; revising items that developers are required to deliver to an association upon relinquishing control of the association; amending s. 718.3027, F.S.; revising requirements regarding attendance at a board meeting in the event of a conflict of interest; modifying circumstances under which a contract may be voided; amending s. 718.303, F.S.; requiring that a notice of nonpayment be provided to a unit owner by a specified time before an election; amending s. 718.501, F.S.; revising circumstances under which the Division of Florida Condominiums, Timeshares, and Mobile Homes has jurisdiction to investigate and enforce certain matters; requiring the division to provide official records, without charge, to a unit owner denied access to such records; requiring the division to adopt rules

related to the approval of educational curriculum providers; requiring the division to refer suspected criminal acts to the appropriate law enforcement authority; authorizing certain division officials to attend association meetings; requiring that an association's annual fee be filed concurrently with the annual certification; specifying requirements for the annual certification; requiring an association to explain on the certification the reasons any certification requirements have not been met; requiring an association to complete the certifications within a specified timeframe; requiring the association to notify the division when the certification is completed; conforming a provision to changes made by the act; amending s. 718.5011, F.S.; specifying that the secretary of the Department of Business and Professional Regulation, rather than the Governor, shall appoint the condominium ombudsman; amending s. 718.618, F.S.; conforming a provision to changes made by the act; amending s. 719.106, F.S.; requiring that a cooperative association's budget include reserve amounts for planned maintenance, rather than for deferred maintenance; providing an exception for certain associations to complete a structural integrity reserve study by a certain date; requiring an association to distribute copies of a structural integrity reserve study to unit owners or deliver a certain notice to them within a specified timeframe; specifying the manner of distribution or

delivery; conforming provisions to changes made by the act; amending s. 719.129, F.S.; authorizing cooperative associations to conduct elections and other unit owner votes through an online voting system if a unit owner consents, either electronically or in writing, to online voting; revising applicability; amending s. 719.301, F.S.; revising items that developers are required to deliver to a cooperative association upon relinquishing control of association property; amending s. 719.618, F.S.; conforming a provision to changes made by the act; requiring the division to conduct a review of statutory requirements regarding posting of official records on a condominium association's website or application; requiring the division to submit its findings, including any recommendations, to the Governor and the Legislature by a specified date; providing effective dates.

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

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability.—

(3) A community association manager or a community association management firm shall return all community association official records within its possession to the community association or successor community association manager or community association management firm within 20 business days after termination of a contractual agreement to provide

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community association management services to the community association or receipt of a written request for return of the official records, whichever occurs first. A notice of termination of a contractual agreement to provide community association management services must be sent by certified mail, return receipt requested, or in the manner required under such contractual agreement. The community association manager or community association management firm may retain, for up to 20 business days, those records necessary to complete an ending financial statement or report. If an association fails to provide access to or retention of accounting records to prepare an ending financial statement or report, the community association manager or community association management firm is relieved from any further responsibility or liability relating to the preparation of such ending financial statement or report. Failure of a community association manager or a community association management firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that the community association manager or a community association management firm willfully failed to comply with this subsection. A community association manager or a community association management firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 business days, assessed beginning on the 21st business day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs

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first.

Section 2. Section 468.4335, Florida Statutes, is created to read:

468.4335 Conflicts of interest.—

(1) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, must provide a written disclosure to the board of a community association of any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice:

(a) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, enters into a contract with the association for goods or services, other than community association management services.

(b) A community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, holds an interest in or receives compensation or any thing of value from a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If the association receives and considers a bid to provide a good or service, other than community association

management services, from a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, the association must also solicit multiple competitive bids from other third-party providers of such good or service.

(3) If a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, proposes to engage in an activity that is a conflict of interest as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda of the next board of administration meeting. The disclosures of a possible conflict of interest must be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members.

(4) If the board finds that a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, has violated this section, the association may cancel its community association management contract with the community association manager or the community association management firm. If the contract is canceled, the association is liable only for the

reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fees, liquidated damages, or other form of penalty for such cancellation.

(5) If an association enters into a contract, other than a contract for community association management services, with a community association manager or a community association management firm, including directors, officers, and persons with a financial interest in a community association management firm, or a relative of such persons, which is a party to or has an interest in an activity that is a possible conflict of interest as described in subsection (1) and that activity has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section, the contract is voidable and terminates upon the association filing a written notice terminating the contract.

(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

(7) The procedures in subsections (2), (3), and (4) do not apply to any activities or the provision of goods and services that are disclosed in the management services contract as a conflict of interest within the meaning of subsection (1).

Section 3. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended, and subsection (4) of that section is reenacted, to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

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(b)1. Violation of ~~any provision of~~ this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Failing to disclose any conflict of interest as required by s. 468.4335.

8. Violating ~~any provision of~~ chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

(4) When the department finds any community association manager or firm guilty of any of the grounds set forth in subsection (2), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed $5,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the community association manager on

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probation for a period of time and subject to such conditions as the department specifies.

(f) Restriction of the authorized scope of practice by the community association manager.

Section 4. Section 553.8445, Florida Statutes, is created to read:

553.8445 Prevention of water intrusion through the tracks of sliding glass doors.—

(1) All residential dwellings must be required to be equipped with a reusable device which is attachable to the sliding glass door track and is designed to reduce water intrusion through the tracks of the sliding glass doors by not less than 90 percent with wind not less than 100 miles per hour as a condition for:

(a) The issuance of a building permit for the construction of a new residential dwelling with an exterior sliding glass door.

(b) The issuance of a building permit for the installation or repair of an exterior sliding glass door in a residential dwelling.

(c) The completion of a milestone inspection required by s. 553.899, or a similar local requirement, for any dwelling with an exterior sliding glass door.

(2) This section shall apply to exterior sliding glass doors contained in any condominium unit, multifamily dwelling, or single-family dwelling.

(3) By July 1, 2025, the commission shall adopt the requirements of this section into the Florida Building Code pursuant to s. 553.73(8).

Section 5. Subsection (4) of section 553.899, Florida Statutes, is amended to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(4) The milestone inspection report must be arranged by a condominium or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection attributable to the portions of a building which the association is responsible to maintain under the governing documents of the association. This section does not apply to a single-family, two-family, ~~or~~ three-family, or four-family dwelling with three or fewer habitable stories above ground.

Section 6. Present subsections (19) through (32) of section 718.103, Florida Statutes, are redesignated as subsections (20) through (33), respectively, a new subsection (19) is added to that section, and subsection (1) of that section is amended, to read:

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

(1) "Alternative funding method" means a method approved by the division for funding the capital expenditures and planned ~~deferred~~ maintenance obligations for a multicondominium association operating at least 25 condominiums which may

reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.

(19) "Hurricane protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

Section 7. Paragraph (p) is added to subsection (4) of section 718.104, Florida Statutes, to read:

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(4) The declaration must contain or provide for the following matters:

(p) For both residential condominiums and mixed-use condominiums, a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

Section 8. Paragraph (a) of subsection (1), paragraph (h) of subsection (11), and subsections (12), (13), and (15) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be

incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept a kickback. As used in this paragraph, the term "kickback" means any thing or service of value ~~or kickback~~ for which consideration has not been provided for an officer's, a director's, or a manager's ~~his or her~~ own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts a ~~any thing or service of value or~~ kickback commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil penalty pursuant to s. 718.501(1)(d) ~~and, if applicable, a criminal penalty as provided in paragraph (d)~~. However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the

Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. Upon receipt of a complaint, the division shall monitor compliance with this paragraph and may issue fines and penalties established by the division for failure of an association to maintain the required insurance policy or fidelity bond. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and

each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)5.e. ~~(c)3.e.~~ However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing

harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. All invoices, transaction receipts, or deposit slips that substantiate any receipt or expenditure of funds by the association.

c. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

d.~~c.~~ All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

e.~~d.~~ All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. A copy of all building permits.

19. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The official records must be maintained in a manner that facilitates inspection of the records by a unit owner. In the event that the records are lost, destroyed, or otherwise unavailable, the obligation to maintain official records includes a good faith obligation to recover those records as may be reasonably possible. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after

receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph and paragraph (c) may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet as provided under paragraph (g) or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in compliance with this chapter unless the association has an affirmative duty not to disclose such information under this chapter.

(c)1.a. The official records of the association are open to inspection by any association member and any person authorized by an association member as a representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member and of the person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection.

The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. If the requested records are posted on an association's website, or are available for download through an application on a mobile device, the association may fulfill its obligations as provided under this paragraph by directing all persons authorized to request access to official records pursuant to this paragraph to the website or mobile device application.

b. In response to a written request to inspect records, the association must simultaneously provide a checklist to the requestor of all records made available for inspection and copying. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist provided under this sub-subparagraph for 7 years. An association delivering a checklist pursuant to this sub-subparagraph creates a rebuttable presumption that the association has complied with this paragraph.

2. Any director or member of the board or association or a

community association manager who knowingly, willfully, and repeatedly violates subparagraph 1. with the intent of causing harm to the association or one or more of its members commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period.

3.~~2.~~ Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

5.~~3.~~ The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit

owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include

written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the

owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an

outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted

in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association

and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall deliver ~~mail~~ to each unit owner, by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements ~~at the address~~

~~last furnished to the association by the unit owner, or hand deliver to each unit owner~~, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed

financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, planned ~~deferred~~ maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests

present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years~~, except that the approval may also be effective for the following fiscal year~~. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this

section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the

association commits theft under s. 812.014. For the purposes of this paragraph, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61~~.

Section 9. Effective January 1, 2026, paragraph (g) of subsection (12) of section 718.111, Florida Statutes, as amended by this act, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(g)1. ~~By January 1, 2019,~~ An association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web

portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of

the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s.

718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 10. Paragraphs (c), (d), (f), (g), and (q) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (r) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(c) *Board of administration meetings.*—In a residential condominium association of more than 10 units, the board of administration shall meet at least once each quarter. At least four times each year, the meeting agenda must include an opportunity for members to ask questions. Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items, and the right to ask questions with respect to reports on the status of construction or repair projects, status of revenues and expenditures during the current fiscal year, and other issues affecting the condominium. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of

business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments.~~

2. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of board meetings must be posted. If there is no condominium property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-

circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

3. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice, made available for inspection and

copying upon a written request from a unit owner, or made available on the association's website or through an application that can be downloaded on a mobile device.

4.~~2.~~ Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

5.~~3.~~ Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be

by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include

timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board

membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium

property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners

of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an

information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. A director of a ~~Within 90 days after being elected or appointed to the~~ board of an association of a residential condominium~~, each newly elected or appointed director~~ shall:

(I) Certify in writing to the secretary of the association

that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may~~

(II) Submit to the secretary of the association a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider ~~within 1 year before or 90 days after the date of election or appointment~~. The education curriculum must be least 4 hours long and address director and officer fiduciary duty, milestone inspections under s. 553.899, structural integrity reserve studies, and at least four of the following topics: budgets and reserves; elections; financial reporting; condominium operations; records maintenance, including unit owner access to records; dispute resolution; and bids and contracts.

Each newly elected or appointed director must submit the written certification and educational certificate to the secretary of the association within 1 year before being elected or appointed or within 90 days after the date of election or appointment. A director of an association of a residential condominium who was elected or appointed before July 1, 2024, shall comply with the written certification and educational certificate requirements

in this sub-subparagraph by June 30, 2025. The written certification and ~~or~~ educational certificate is valid for 7 years from the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during the 7-year period. A director who is appointed by the developer may satisfy the educational certificate requirement in sub-sub-subparagraph (II) for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or an appointment to a board in another association within that 7-year period. Additionally, one year after submission of the most recent written certification and educational certificate, and annually thereafter, a director of an association of a residential condominium must submit to the secretary of the association a certificate of having satisfactorily completed an educational curriculum administered by a division-approved condominium education provider, relating to any recent changes to this chapter and the related administrative rules, during the past year. The cost of a required educational curriculum and certificate is an expense of the association which the association may pay on behalf of the director or reimburse the director for his or her expense. A director of an association of a residential condominium who fails to timely file the written certification and ~~or~~ educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification and ~~or~~

educational certificate for inspection by the members for 7 ~~5~~ years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification and ~~or~~ educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration; unit owner meetings, except unit owner meetings called to recall board members under paragraph (l); and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of

unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a

majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and

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planned ~~deferred~~ maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of planned ~~deferred~~ maintenance expense or replacement cost, and any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or planned ~~deferred~~ maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of planned ~~deferred~~ maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by planned ~~deferred~~ maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than

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required by this subsection. For a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less reserves than required by this subsection if an alternative funding method has been approved by the division. If the local building official, as defined in s. 468.603, determines that the entire condominium building is uninhabitable due to a natural emergency, as defined in s. 252.34, the board, upon the approval of a majority of its members, may pause the contribution to its reserves or reduce reserve funding until the local building official determines that the condominium building is habitable. Any reserve account funds held by the association may be expended, pursuant to the board's determination, to make the condominium building and its structures habitable. Upon the determination by the local building official that the condominium building and its structures are habitable, the association must immediately resume contributing funds to its reserves.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in

the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all the total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for any other purpose other than the replacement or planned ~~deferred~~ maintenance costs of the components listed in paragraph (g).

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN

PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. A residential condominium association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height, as determined by the Florida Building Code, which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of

the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. If the condominium building or units are unsafe and uninhabitable due to substantial damage or loss as determined by the local enforcement agency, as defined in s. 533.71(5), and it is in the best interests of the association to

use revenues and existing reserve funds to perform necessary repairs to make the building safe and habitable, the structural integrity reserve study may recommend a temporary pause in reserve funding or reduced reserve funding, but the association may not pause reserve funding after the building has been declared safe for occupancy by the local enforcement agency.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, ~~or~~ three-family, or four-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 718.301(4)(p) and (q) for each building on the condominium property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or

an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

(q) *Director or officer offenses.*—

1. A director or an officer charged by information or indictment with any of the following crimes is deemed removed from office and a vacancy declared:

a. Forgery of a ballot envelope or voting certificate used in a condominium association election as provided in s. 831.01.

b. Theft or embezzlement involving the association's funds or property as provided in s. 812.014.

c. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.

e. Any criminal violation under this chapter.

2. The board shall fill the vacancy in accordance with paragraph (2)(d) ~~a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law~~ until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or an officer of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(r) *Fraudulent voting activities relating to association elections; penalties.*—

1. A person who engages in the following acts of fraudulent voting activity relating to association elections commits a misdemeanor of the first degree, punishable as provided in s.

775.082 or s. 775.083:

a. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

b. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

c. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This subsection does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2. Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.

775.083:

a. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

b. Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

c. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

This subparagraph does not apply to a licensed attorney giving legal advice to a client.

3. Any person charged by information or indictment for any of the crimes in this paragraph shall be deemed removed from office and a vacancy declared.

Section 11. Subsection (5) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane ~~shutters and~~ protection; display of religious decorations.—

(5) To protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, this subsection applies to all residential and mixed-use condominiums in this state, regardless of when the condominium is created pursuant to the declaration of condominium. Each board of administration of a residential

condominium or mixed-use condominium shall adopt hurricane protection ~~shutter~~ specifications for each building within each condominium operated by the association which may ~~shall~~ include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code. The installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with this subsection is not considered a material alterations or substantial additions to the common elements or association property within the meaning of this section.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium or mixed-use condominium, install or require that unit owners install hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection that complies ~~comply~~ with or exceeds ~~exceed~~ the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand deliver a copy of the recorded certificate to the unit owners at the owners' addresses, as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who

previously consented to receive notice by electronic transmission. The failure to record the certificate or send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners. ~~However,~~ A vote of the unit owners under this paragraph is not required if the installation, maintenance, repair, and replacement of the hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection, or any exterior windows, doors, or other apertures protected by the hurricane protection, is ~~are~~ the responsibility of the association pursuant to the declaration of condominium as originally recorded or as amended, or if the unit owners are required to install hurricane protection pursuant to the declaration of condominium as originally recorded or as amended. If hurricane protection ~~or laminated glass or window film architecturally designed to function as hurricane protection~~ that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit ~~except upon approval by a majority vote of the voting interests~~.

~~(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.~~

(b) ~~(c)~~ The board may operate ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection ~~installed pursuant to this subsection~~ without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or ~~and~~ association property. ~~The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.~~

(c) ~~(d)~~ Notwithstanding any other provision in the residential condominium or mixed-use condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by a unit owner which conforms ~~conforming~~ to the specifications adopted by the board. However, a board may require the unit owner to adhere to an existing unified building scheme regarding the external

appearance of the condominium.

(d) Unless otherwise provided in a declaration of condominium recorded in the public record before July 1, 2024, a unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection, and any exterior window, door, or other aperture protected by the hurricane protection, if its removal is necessary for the maintenance, repair, or replacement of other condominium property or association property for which the association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be completed by the unit owner or the association. If such removal or reinstallation is completed by the association, the costs incurred by the association may not be charged to the unit owner. If such removal or reinstallation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal or reinstallation or the association must apply the unit owner's cost of removal or reinstallation as a credit toward future assessments.

(e) If the removal or installation of hurricane protection or of any exterior windows, doors, or other apertures protected by the hurricane protection are the responsibility of the unit owner, such removal or installation is completed by the association, and the association then charges the unit owner for such removal or installation, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

Section 12. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e)1. Except as provided in s. 718.113(5)(d) ~~The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However~~, if the installation of ~~maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection is ~~are~~ the responsibility of the unit owners pursuant to the declaration of condominium or a vote of the unit owners under s. 718.113(5), the cost of the installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by the association is not a common expense and must ~~shall~~ be charged individually to the unit owners based on the cost of installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection appurtenant to the unit. The costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

2. Notwithstanding s. 718.116(9), and regardless of whether ~~or not~~ the declaration requires the association or unit owners

to install, maintain, repair, or replace ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection, the ~~a unit~~ owner of a unit where ~~who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant~~ hurricane protection that complies ~~comply~~ with the current applicable building code has been installed is excused from any assessment levied by the association or shall receive a credit if ~~when~~ the same type of ~~other code-compliant~~ hurricane protection is installed by the association~~, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit~~. A credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection. However, such unit owner remains responsible for the pro rata share of expenses for ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of

the expense of the replacement, operation, repair, and maintenance of such ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection. Expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

Section 13. Paragraph (a) of subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.c. ~~s. 718.111(12)(a)11.b.~~, the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

Section 14. Section 718.1224, Florida Statutes, is amended to read:

718.1224 Prohibition against SLAPP suits; other prohibited actions.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before their condominium association and the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when

association members are sued by condominium associations, individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before the board of the condominium association or a governmental entity on matters related to the condominium association. However, it is the public policy of this state that condominium associations, governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in their condominium association and in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by condominium associations, governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, ~~and~~ ensure the continuation of representative government in this state, and ensure unit owner participation in condominium associations. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; law enforcement agencies; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A condominium association, a governmental entity, a business organization, or an individual in this state may not

file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the condominium association or the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) A condominium association may not fine, discriminatorily increase a unit owner's assessments or discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct described in paragraphs (a)-(f). In order for the unit owner to raise the defense of retaliatory conduct, the unit owner must have acted in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

(a) The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;

(b) The unit owner has organized, encouraged, or participated in a unit owners' organization;

(c) The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;

(d) The unit owner has exercised his or her rights under this chapter;

(e) The unit owner has complained to the association or any of its representatives for their failure to comply with this chapter or chapter 617; or

(f) The unit owner has made public statements critical of the operation or management of the association.

(4) Evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession.

(5) A condominium unit owner sued by a condominium association, governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the condominium association's, governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The condominium association, governmental entity, business organization, or individual shall thereafter file its

response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the condominium association's, governmental entity's, business organization's, or individual's response. The court may award the condominium unit owner sued by the condominium association, governmental entity, business organization, or individual actual damages arising from the condominium association's, governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6)~~(4)~~ Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

(7) Condominium associations may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in paragraphs (3)(a)-(f).

Section 15. Section 718.128, Florida Statutes, is amended to read:

718.128 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements

are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association.

Section 16. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration

of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 17. Subsections (4) and (5) of section 718.3027,

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

Florida Statutes, are amended to read:

718.3027 Conflicts of interest.—

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, and any ~~or the~~ relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote. The attendance of a director with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in his or her absence on the proposed activity.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section or s. 617.0832 ~~s. 718.111(12)(g)~~ is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 18. Subsection (5) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

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

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. Notice of such obligation must also be provided to the unit owner at least 90 days before an election. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

Section 19. Subsections (1) and (2) of section 718.501, Florida Statutes, are amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with

this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), allegations of criminal violations under this chapter, the removal of a director or an officer under s. 718.112(2)(q), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination

and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as

follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to

pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter, or related rule, or chapter 617. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon

such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the

division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112. Upon receipt of the records, the division shall provide without charge the produced official records to the unit owner who was denied access to such records.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (s) ~~(r)~~. The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce this chapter.

(g) The division shall establish procedures for providing

notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division shall adopt by rule the educational curriculum required under s. 718.112(2)(d) for its approval of condominium education providers.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium

disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists

to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation. The division shall refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or when the division has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

(o) The division director or any officer or employee of the division, and the condominium ombudsman or an employee of the Office of the Condominium Ombudsman, may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee,

that is open to members of the association for the purpose of performing the duties of the division or the Office of the Condominium Ombudsman under this chapter.

(p) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(q) ~~(p)~~ The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(r) ~~(q)~~ The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(s) ~~(r)~~ In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(t) ~~(s)~~ The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations

exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. The annual fee must be filed together with the annual certification described in paragraph (c). If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

(c) On the certification form provided by rule of the division, the directors of the association shall certify that all directors of the association have or have not completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b. If the association certifies that a director has not completed the written certification and educational certificate requirements, the association must explain on the certification form the reasons the written certification and educational certificate requirements have not been met and provide the date by which the requirements will be met, which may not be more than 60 days after the date the

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certification form required under this paragraph is submitted to the division. Upon completion of the requirements in s. 718.112(2)(d)4.b., the association must notify the division, on a form adopted by rule of the division, that the requirements have been met.

Section 20. Subsection (2) of section 718.5011, Florida Statutes, is amended to read:

718.5011 Ombudsman; appointment; administration.—

(2) The secretary of the Department of Business and Professional Regulation ~~Governor~~ shall appoint the ombudsman~~.~~ ~~The ombudsman must be an attorney admitted to practice before the Florida Supreme Court~~ who ~~and~~ shall serve at the pleasure of the secretary ~~Governor~~. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

Section 21. Subsection (1) of section 718.618, Florida Statutes, is amended to read:

718.618 Converter reserve accounts; warranties.—

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

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and planned ~~deferred~~ maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed

and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount

of converter reserves to be funded by the developer for each structure or component shall be based on the age of the structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

Section 22. Paragraphs (j) and (k) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and planned ~~deferred~~ maintenance. These accounts must include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of planned ~~deferred~~ maintenance expense or replacement cost, and for any other items for which the planned ~~deferred~~ maintenance expense or replacement cost exceeds $10,000. The amount to be reserved must be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or planned ~~deferred~~ maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (k) for which the association is responsible pursuant to the declaration, and the reserve amount for such items must be based on the findings and

recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of planned ~~deferred~~ maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by planned ~~deferred~~ maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. For a budget adopted on or after December 31, 2024, a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k). If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall

remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for purposes other than the replacement or planned ~~deferred~~ maintenance costs of the components listed in paragraph (k).

(k) *Structural integrity reserve study.*—

1. A residential cooperative association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height, as determined by the Florida Building Code, that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate

of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a planned ~~deferred~~ maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, ~~or~~ three-family, or four-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 719.301(4)(p) and (q) for each building on the cooperative property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity

reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(9).

9. Within 45 days after receiving the structural integrity reserve study, the association shall distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

Section 23. Section 719.129, Florida Statutes, is amended to read:

719.129 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based

online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is

established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting pursuant to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare cooperative association.

Section 24. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a

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majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

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

Section 25. Subsection (1) of section 719.618, Florida Statutes, is amended to read:

719.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential cooperative, the developer shall establish planned ~~reserve~~ accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

Section 26. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall complete a review of the website or application requirements for official records under s. 718.111(12)(g), Florida Statutes, and make recommendations regarding any additional official records of a condominium association which should be included in the records maintenance requirement in the statute. The division shall submit the findings of its review to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over

chapter 718, Florida Statutes, by February 1, 2025.

Section 27. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal
Committee

1178
Bill Number or Topic

863108
Amendment Barcode (if applicable)

Name Ellyn Bogdanoff

Phone 954 364 6005

Address 1 E. Broward Blvd
Street

Email ebogdanoff@beckerlawyers.com

Ft Laud FL 33301
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Becker

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

1178
Bill Number or Topic

663108
Amendment Barcode (if applicable)

Name Adam Basford

Phone 352-538-4299

Address 516 N Adams
Street

Email abasford@aif.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Associated Industries of FL

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Rules
Committee

SB 1178
Bill Number or Topic

863108 DE
Amendment Barcode (if applicable)

Name KARI HEBRANK

Phone 850-566-7824

Address 215 S. MONROE ST. #500
Street

TALLAHASSEE FL 32301
City State Zip

Email khebrank@carltonfields.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:
FLORIDA HOME BUILDERS

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2-27-24
Meeting Date

Fiscal Policy
Committee

cs/cs 1178
Bill Number or Topic

#863108
Amendment Barcode (if applicable)

Name Pete Dunbar

Phone 850/214-5100

Address 106 E. College Ave #1200
Street

Email peterdunbar@jonesswalker.com

Tallahassee 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Real Property Section of The Florida Bar

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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2.27.24
Meeting Date

Fiscal Policy
Committee

1178
Bill Number or Topic

863108
Amendment Barcode (if applicable)

Name Stephen Shiver

Phone 850 222 8900

Address 204 S Monroe
Street

Email Stephen@TapFLA.com

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Marriott International

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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Fiscal Policy
Committee

SB 1178
Bill Number or Topic

863108 DE
Amendment Barcode (if applicable)

Name Claudia Davant

Phone 850-567-0979

Address
Street

Email claudia@adamsstadvocacy.com

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Storm Armour

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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02/27/24
Meeting Date

Fiscal Policy
Committee

SB 1178
Bill Number or Topic

863108
Amendment Barcode (if applicable)

Name Jonathon Joseph Gonzalez

Phone (305) 290-9006

Address 426 NW 88th Ave
Street

Email jayg1993ny@gmail.com

Coral Springs FL 33065
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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02/27/24
Meeting Date

Fiscal Policy
Committee

SB 1178
Bill Number or Topic

595242 (863108)
Amendment Barcode (if applicable)

Name Jamaalton Joseph Gonzalez

Phone (305) 290-9006

Address 4126 NW 88th Ave
Street

Email jayg1993ny@gmail.com

Coral Springs FL 33065
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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2-27-24
Meeting Date

Fiscal Policy
Committee

1178
Bill Number or Topic

Amendment Barcode (if applicable)

Name Travis Moore

Phone 727.421.6902

Address P.O. Box 2020
Street

Email travis@moore-Relations.com

St. Petersburg FL 33731
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Community Associations Institute

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

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2/28/24
Meeting Date

Rules
Committee

SB 1178
Bill Number or Topic

Amendment Barcode (if applicable)

Name KARE HEBRANK

Phone 850-766-7824

Address 215 S. Monroe St.
Street

Email khebrank@carltonfields.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: FLORIDA HOME BUILDERS ASSOC.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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2/27
Meeting Date

FISLAL
Committee

1178
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brason

Phone 561 8152881

Address 12031 Coral

Email JBrason@gmail.com

Street

FBG FL 33418

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2-27-24
Meeting Date

Fiscal Policy
Committee

cs/cs 1178
Bill Number or Topic

Amendment Barcode (if applicable)

Name Pete Dunbar

Phone 850/224-5100

Address 106 E College Ave #1200
Street

Email peterdunbar@joneswalker.com

Tallahassee 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Real Property, Probate & Trust Law Section of Florida Bar

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

CS/CS SB 1178
Bill Number or Topic

Amendment Barcode (if applicable)

Name William SKlar

Phone 561-843-2909

Address 215 S. Monroe St. Ste 500
Street

Tallahassee FL 32301
City State Zip

Email wsklar@carltonfields.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Homebuilders Ass'n

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	SB 1220
INTRODUCER:	Senator Martin
SUBJECT:	Schemes to Defraud
DATE:	February 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaughan	Stokes	CJ	**Favorable**
2.	Atchley	Harkness	ACJ	**Favorable**
3.	Vaughan	Yeatman	FP	**Favorable**

I. Summary:

SB 1220 amends s. 817.034, F.S., to reclassify the penalty for committing specified offenses of schemes to defraud against a person 65 years of age or older, or against a person with mental or physical disabilities.

- A first degree misdemeanor is reclassified to a third degree felony;
- A third degree felony is reclassified to a second degree felony;
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

The bill adds "endorsements of nonconsenting parties" to the definition of "scheme to defraud."

The bill provides that a person whose image or likeness is used without his or her consent in a scheme to defraud may file a civil action in a court of competent jurisdiction to recover damages caused by the use of his or her image or likeness.

The bill may have a positive indeterminate prison bed impact. See Section V., Fiscal Impact Statement.

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Section 817.034(3)(d), F.S., defines "scheme to defraud" as a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.[1]

[1] Section 817.034(3)(d), F.S.

Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:[2]

- Property obtained that has an aggregate value of $50,000 or more, the violator is guilty of a first degree felony.
- Property obtained that has an aggregate value of $20,000 or more, but less than $50,000, the violator is guilty of a second degree felony.[3]
- Property obtained that has an aggregate value of less than $20,000, the violator is guilty of a third degree felony.[4]

Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:[5]

- If the value of property obtained or endeavored to be obtained by the communication is valued at $300 or more, the violator is guilty of a third degree felony.
- If the value of the property obtained or endeavored to be obtained by the communication is valued at less than $300, the violator is guilty of a first degree misdemeanor.[6]

Currently, there is no reclassification for scheme to defraud if the offense is against a person 65 years of age or older or against a person with a mental or physical disability.

Reclassification and Ranking

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.[7]

[2] Section 817.034(4)(a), F.S.
[3] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[4] A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S.
[5] Section 817.034(4)(b), F.S.
[6] A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year. Sections 775.082 and 775.083, F.S.
[7] Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.083, F.S., provides the following maximum fines; $500 for a second degree misdemeanor; $1,000 for a first degree misdemeanor; $5,000 for a third degree felony; and $10,000 for a second degree felony and a first degree felony.

Criminal Punishment Code

The Florida Criminal Punishment Code **is** a set of guidelines that judges use to determine the appropriate sentence for a criminal offense in Florida.[8] The Criminal Punishment Code[9] is Florida's primary sentencing policy. If the offense is not listed in the chart, then by default the ranking is based on the felony degree of the offense as explained in s 921.0023, F.S.[10]

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).[11] Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses.

The lowest permissible sentence is any non-state prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.[12] Absent mitigation,[13] the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[14]

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[8] Florida Department of Corrections, *Florida Criminal Punishment Code Scoresheet Preparation Manual,* https://fdc.myflorida.com/pub/scoresheet/Scoresheet%20Preparation%20Manual%202021.pdf (Last visited January 17, 2024).

[9] Sections 921.002-921.0027, F.S. *See* chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

[10] Section 921.0023.

[11] Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

[12] Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

[13] The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

[14] If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

III. Effect of Proposed Changes:

The bill amends s. 817.034, F.S., to reclassify the penalty for committing specified offenses of schemes to defraud against a person 65 years of age or older, or against a person with mental or physical disabilities.

- A first degree misdemeanor[15] is reclassified to a third degree felony;[16]
- A third degree felony is reclassified to a second degree felony;[17]
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

The bill adds "endorsements of nonconsenting parties" to the definition of "scheme to defraud."

The bill provides that a person whose image or likeness is used without his or her consent in a scheme to defraud may file a civil action in a court of competent jurisdiction to recover damages caused by the use of his or her image or likeness.

Technical changes have been made throughout the bill to streamline language, but do not change the meaning.

The bill provides an effective date of October 1, 2024.

IV. Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[15] A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year. Sections 775.082 and 775.083, F.S.
[16] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[17] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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 determined the bill may have a positive indeterminate impact on prison beds (unquantifiable increase in prison beds) due to reclassifying certain scheme to defraud offenses committed against persons 65 years of age or older or persons with certain disabilities.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.034 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.

[18] Office of Economic and Demographic Research *SB 1220*, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1220.pdf.

By Senator Martin

33-01197B-24 20241220__

A bill to be entitled

An act relating to schemes to defraud; amending s. 817.034, F.S.; revising the definition of the term "scheme to defraud"; providing for the reclassification of certain scheme-to-defraud offenses committed against persons 65 years of age or older or persons with certain disabilities; authorizing a person whose image or likeness is used without his or her consent in a scheme to defraud to file a civil action for damages; making technical changes; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) and subsection (4) of section 817.034, Florida Statutes, are amended to read:

817.034 Florida Communications Fraud Act.—

(3) DEFINITIONS.—As used in this section, the term:

(d) "Scheme to defraud" means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, endorsements of nonconsenting parties, or promises or willful misrepresentations of a future act.

(4) OFFENSES.—

(a) Any person who engages in a scheme to defraud and obtains property thereby commits ~~is guilty of~~ organized fraud, punishable as follows:

1. If the amount of property obtained has an aggregate

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33-01197B-24 20241220__

value of $50,000 or more, the person commits ~~violator is guilty of~~ a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the amount of property obtained has an aggregate value of $20,000 or more, but less than $50,000, the person commits ~~violator is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the amount of property obtained has an aggregate value of less than $20,000, the person commits ~~violator is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with the intent to obtain property from that person commits ~~is guilty~~, for each such act of communication, ~~of~~ communications fraud, punishable as follows:

1. If the value of property obtained or endeavored to be obtained by the communication is valued at $300 or more, the person commits ~~violator is guilty of~~ a third degree felony, punishable as set forth in s. 775.082, s. 775.083, or s. 775.084.

2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than $300, the person commits ~~violator is guilty of~~ a misdemeanor of the first degree, punishable as set forth in s. 775.082 or s. 775.083.

(c) The penalty for committing an offense specified in paragraph (a) or paragraph (b) against a person 65 years of age or older or against a person with a mental or physical

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

disability as defined in s. 775.0863 shall be reclassified as follows:

1. A misdemeanor of the first degree is reclassified to a felony of the third degree.

2. A felony of the third degree is reclassified to a felony of the second degree.

3. A felony of the second degree is reclassified to a felony of the first degree.

4. A felony of the first degree is reclassified to a life felony.

(d) A person whose image or likeness is used without his or her consent in a scheme to defraud may file a civil action in a court of competent jurisdiction to recover damages caused by the use of his or her image or likeness.

(e) Notwithstanding any contrary provisions of law, separate judgments and sentences for organized fraud under paragraph (a) and for each offense of communications fraud under paragraph (b) may be imposed when all such offenses involve the same scheme to defraud.

(f) ~~(d)~~ Notwithstanding any other ~~provision of~~ law, a criminal action or civil action or proceeding under this section may be commenced at any time within 5 years after the cause of action accrues; however, in a criminal proceeding under this section, the period of limitation does not run during any time when the defendant is continuously absent from this ~~the~~ state or is without a reasonably ascertainable place of abode or work within this ~~the~~ state, but in no case shall this extend the period of limitation otherwise applicable by more than 1 year.

Section 2. This act shall take effect October 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

February 27, 2024
Meeting Date

Fiscal Policy
Committee

SB 1220
Bill Number or Topic

Amendment Barcode (if applicable)

Name Brian Jogerst

Phone 850-222-0191

Address PO Box 11094
Street

Email brian@bhandassociates.com

Tallahassee FL 32302
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Bar/Elder Law Section

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/CS/SB 1226
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Transportation, Tourism, and Economic Development; Transportation Committee; and Senator DiCeglie
SUBJECT:	Department of Transportation
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Vickers	TR	**Fav/CS**
2.	Nortelus	Jerrett	ATD	**Fav/CS**
3.	Johnson	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1226 revises various provisions relating to the Florida Department of Transportation (FDOT). The bill:

- Updates FDOT's statutory program areas to reflect its current organizational structure.
- Repeals obsolete language regarding the appointment of FDOT's inspector general.
- Provides $15 million in recurring revenue be made available for the Intermodal Logistics Center Infrastructure Support Program.
- Amends FDOT's statutory mission, goals, and objectives.
- Requires public notice and input prior to a governmental entity repurposing one or more existing traffic lanes.
- Increases from three years to ten years the length of time before an inactive prepaid toll account becomes unclaimed property.
- Revises provisions regarding an interlocal agreement and FDOT's funding of a fire station on Alligator Alley.
- Prohibits FDOT from spending state funds on transportation entities violating certain statutory requirements.
- Provides that specified revenues deposited into the State Transportation Trust Fund must first be available for appropriation for payments under a service contract entered into with the Florida Department of Transportation Financing Corporation to fund arterial highway projects.

- Authorizes FDOT to enter into service contracts with the Florida Department of Transportation Financing Corporation for specified projects.
- Authorizes local governments in specified areas to, subject to specific appropriation, compete for additional funding using the criteria for the Small County Outreach Program to fund projects on roads primarily used for agricultural purposes.
- Provides that lane repurposing for public transit must be approved by a supermajority vote of the transit authority's board.
- Requires any action of eminent domain for public transit facilities must be discussed at a public meeting of the transit provider's board.
- Provides that certain unallocated New Starts Transit funds must be reallocated to the Strategic Intermodal System for a two year period.
- Prohibits public transit providers from spending FDOT funds on certain marketing or advertising activities.
- Prohibits window tinting on public transit buses from being any darker than what is legally allowed for motor vehicles.
- Requires each public transit provider to annually certify that its budgeted and actual general administrative costs are no greater than 20 percent above the state average administrative costs.
- Requires public transit providers to disclose employee compensation and benefits, ridership and performance metrics, and any gifts accepted in exchange for a contract.
- Requires specified increases in administrative costs by a public transit provider must be reviewed and approved by FDOT.
- Grants the Florida Rail Enterprise the power and duty to preserve future rail corridors and rights of way.

The bill may have both negative and positive fiscal impacts on private and governmental sectors. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

For ease of readability and organization, the present situation is discussed below with the effect of proposed changes.

III. Effect of Proposed Changes:

FDOT Organizational Structure (Section 1)

Present Situation

The Florida Department of Transportation (FDOT) is a decentralized agency headed by the Secretary of Transportation (secretary).[1] The secretary may appoint up to three assistant secretaries who are directly responsible to the secretary and who perform such duties as are assigned by the secretary.[2]

[1] Section 20.23(1)(a), F.S.
[2] Section 20.23(1)(d), F.S.

FDOT's secretary may appoint deputy assistant secretaries or directors which the secretary deems necessary to accomplish FDOT's mission and goals, including, but not limited to, the areas of program responsibility listed below, each of whom is appointed by and serves at the pleasure of the secretary. The secretary may combine, separate, or delete offices as needed in consultation with the Executive Office of the Governor. FDOT's areas of program responsibility include, but are not limited to:

- Administration;
- Planning;
- Public transportation;
- Design;
- Highway operations;
- Right-of-way;
- Toll operations;
- Information systems;
- Motor carrier weight inspection;
- Management and budget;
- Comptroller;
- Construction;
- Maintenance; and
- Materials.[3]

Effect of Proposed Changes

The bill revises FDOT's areas of program responsibility by replacing:

- Public transportation with modal development; and
- Management and budget with work program development and budget.

The bill adds the following areas of program responsibility:

- Transportation technology;
- Statewide corridors;
- Forecasting and performance;
- Emergency management; and
- Safety.

Appointment of the Florida Department of Transportation's Inspector General (Section 1)

Present Situation

Florida law establishes an office of inspector general in each state agency, providing a central point of coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. Florida law provides various duties and responsibility regarding each state agency's inspector general.[4]

[3] Section 20.23(3)(b), F.S.
[4] Section 20.055. FS.

In 2014, the Legislature transferred the appointment and removal of a Governor's agency inspector general from the agency head to the Governor's Chief Inspector General.[5] For state agencies under the jurisdiction of the Cabinet or the Governor and Cabinet, the agency head appoints the agency's inspector general. For state agencies under the jurisdiction of the Governor, the Chief Inspector General appoints the agency's inspector general.[6] FDOT is under the Governor's jurisdiction.[7]

Conflicting with the generally applicable requirements regarding the appointment of an inspector general, Florida law also requires the Secretary of Transportation to appoint FDOT's inspector general.[8]

Effect of Proposed Changes

The bill repeals obsolete language regarding the Secretary of Transportation's authority to appoint FDOT's inspector general.

Intermodal Logistics Center Infrastructure Support Program (Section 2)

Present Situation

An intermodal logistics center is a facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, goods distribution, consolidation, or value-added activities are carried out and whose activities and services are designed to support or be supported by conveyance or shipping through one or more seaports listed in s. 311.09, F.S.[9]

FDOT's Intermodal Logistics Center Infrastructure Support Program's (program) purpose is to provide funds for roads, rail facilities, or other means for the conveyance or shipment of goods through a seaport, enabling the state to respond to private sector market demands and meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities. FDOT may provide funds to assist with local government projects or projects performed by private entities that meet the public purpose of enhancing transportation facilities for the conveyance or shipment of goods through a seaport to or from an intermodal logistics center.[10]

FDOT must consider, but is not limited to, the following criteria when evaluating projects for program assistance:

- The ability of the project to serve a strategic state interest.
- The ability of the project to facilitate the cost-effective and efficient movement of goods.

[5] Chapter 2014-144, Laws of Fla.
[6] Section 20.055(3)(a)1., F.S.
[7] *See* s. 20.23(1)(a), F.S.
[8] Section 20.23(3)(c), F.S.
[9] Section 311.101(2), F.S. The ports listed in s. 311.09(1), F.S., are Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
[10] Section 311.101(1), F.S.

- The extent to which the project contributes to economic activity, including job creation, increased wages, and revenues.
- The extent to which the project efficiently interacts with and supports the transportation network.
- A commitment of a funding match.
- The amount of investment or commitments made by the owner or developer of the existing or proposed facility.
- The extent to which the owner has commitments with private sector businesses planning to locate operations at the intermodal logistics center.
- Demonstrated local financial support and commitment to the project.[11]

FDOT must provide up to 50 percent of project costs for eligible projects, except that for eligible projects in rural areas of opportunity,[12] where the FDOT may provide up to 100 percent of project costs.[13]

When the program was created in 2012,[14] up to $5 million per year was made available from the State Transportation Trust Fund (STTF) for the program.[15] This funding expired on July 1, 2020.[16]

Effect of Proposed Changes

The bill provides that, beginning in 2024-2025 fiscal year through the 2029-2030 fiscal year, $15 million in recurring revenue must be made available from the STTF for the program. FDOT must include projects proposed to be funded in its tentative work program.

FDOT Mission, Goals, and Objectives (Section 3)

Present Situation

Section 334.046, F.S., contains FDOT's mission, goals, and objectives. Under Florida law, the prevailing principles to be considered in planning and developing an integrated, balanced statewide transportation system are: preserving the existing transportation infrastructure; enhancing Florida's economic competitiveness; and improving travel choices to ensure mobility.[17]

FDOT's mission is to provide a safe statewide transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.[18]

[11] Section 311.101(3), F.S.
[12] Rural Areas of Opportunity are designated in accordance with s. 288.0656(7)(a), F.S.
[13] Section 311.101(6), F.S.
[14] Chapters 2012-128 and 2012-174, Laws of Fla.
[15] FDOT's tentative work program is developed pursuant to s. 339.135(4), F.S.
[16] *See* Chapter 2014-216, Laws of Fla.
[17] Section 334.046(1), F.S.
[18] Section 334.046(2), F.S.

FDOT must document in the Florida Transportation Plan,[19] and based upon the prevailing principles of preserving the existing transportation infrastructure, enhancing Florida's economic competitiveness, and improving travel choices to ensure mobility, the goals and objectives that provide statewide policy guidance for accomplishing the department's mission.[20]

At a minimum, FDOT's goals must address the following prevailing principles:

- *Preservation.*—Protecting the state's transportation infrastructure investment. Preservation includes:
  - Ensuring that 80 percent of the pavement on the State Highway System meets FDOT standards;
  - Ensuring that 90 percent of FDOT-maintained bridges meet FDOT standards; and
  - Ensuring that FDOT achieves 100 percent of the acceptable maintenance standard on the State Highway System.
- *Economic competitiveness.*—Ensuring that the state has a clear understanding of the economic consequences of transportation investments, and how such investments affect the state's economic competitiveness. FDOT must develop a macroeconomic analysis of the linkages between transportation investment and economic performance, as well as a method to quantifiably measure the economic benefits of the district-work-program investments. Such an analysis must analyze:
  - The state's and district's economic performance relative to the competition.
  - The business environment as viewed from the perspective of companies evaluating the state as a place in which to do business.
  - The state's capacity to sustain long-term growth.
- *Mobility.*—Ensuring a cost-effective, statewide, interconnected transportation system.[21]

Effect of Proposed Changes

The bill amends FDOT's mission, goals and objectives. The bill requires FDOT to consider the following prevailing principles when planning and developing the state's multimodal transportation system: preserving Florida's transportation infrastructure; supporting its economic competitiveness; and preserving Florida's quality of life.

FDOT's mission is to provide a safe statewide transportation system that promotes the efficient movement of people and goods, supports the state's economic competitiveness, prioritizes Florida's environment and natural resources, and preserves the quality of life and connectedness of the state's communities.

The prevailing principles outlined below must be incorporated into all goals and objectives that provide statewide policy and guidance for accomplishing FDOT's mission, including the Florida Transportation Plan.

At a minimum, FDOT's goals must address the following prevailing principles:

- *Maintaining investments.* – Protecting the state's infrastructure investment, which includes:

[19] The Florida Transportation Plan is provided for in s. 339.155, F.S.
[20] Section 334.046(3)
[21] Section 334.046(4), F.S.

  - Ensuring that 80 percent of the pavement on the State Highway System meets FDOT standards;
  - Ensuring that 90 percent of FDOT-maintained bridges meet FDOT standards; and
  - Ensuring that FDOT achieves 100 percent of the acceptable maintenance standard on the State Highway System.
- *Economic competitiveness.* - Ensuring that the state has a clear understanding of the return on investment and economic impacts of transportation infrastructure investments and how such investments affect the state's economic competitiveness. FDOT must develop a macroeconomic analysis of the linkages between transportation investment and economic performance, as well as a method to quantifiably measure the economic benefits of the district-work-program investments. Such an analysis must analyze:
  - The state's and district's economic performance relative to the competition.
  - The business environment as viewed from the perspective of companies evaluating the state as a place in which to do business.
  - The state's capacity to sustain long-term growth.
- *Connected transportation system.* – Ensuring a cost-effective, statewide, interconnected transportation system that provides the most efficient and effective multimodality and mobility.
- *Preserving Florida's natural resources and quality of life.* – Prioritizing Florida's natural resources and the quality of life in its communities.

Traffic Lane Repurposing (Section 4)

Present Situation

To balance the needs of the statewide transportation network and local roadways, FDOT has developed a process allowing local and regional agencies to repurpose parts of FDOT-owned roadways in their jurisdiction for other purposes such as a dedicated transit lane or to make the area more pedestrian friendly. To do this, the relevant local government develops a lane repurposing application and conceptual plan that is be sent to the appropriate FDOT district's Lane Repurposing Coordinator for approval based on certain criteria.[22]

FDOT's *Lane Repurposing Guidebook* provides information regarding lane repurposing, including the application process, concept report, public involvement and examples of such projects.

Effect of Proposed Changes

The bill provides that whenever a governmental entity[23] proposes any project that will repurpose one or more existing traffic lanes, the governmental entity must include a traffic study to address

[22] FDOT, *Lane Repurposing Guidebook*, August 2020, Section 1.1, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/systems/systems-management/document-repository/lane-repurposing/lr_guidebook-2020.pdf?sfvrsn=b4 (last visited February 20, 2024).

[23] Section 334.044(11), F.S., defines the term "governmental entity" to mean a unit of government, or any officially designated public agency or authority of a unit of government, that has the responsibility for planning, construction, operation, or maintenance or jurisdiction over transportation facilities; the term includes the Federal Government, the state government, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

any potential adverse impacts of the project, including, but not limited to, changes in traffic congestion and impacts on safety.

If, following the required study, the governmental entity elects to continue with the design of the project, it must notify all affected property owners, impacted municipalities, and the counties in which the project is located at least 180 days before the design phase of the project is completed. The notice must provide a written explanation regarding the need for the project, information on how to review the required traffic study, and indicate that all affected parties will be given an opportunity to provide comments to the proposing entity regarding potential impacts of the change.

The governmental entity must hold at least one public meeting, with at least 30 days prior notice, before completing the design phase of the project in the jurisdiction where the project is located. At the public meeting, the governmental entity must explain the purpose of the project and receive public input, including possible alternatives, to determine the manner in which the project will affect the community.

The governmental entity must review all comments from the public meeting and take the comments and any alternatives presented during the meeting into consideration in the final design of the project.

Inactive Prepaid Toll Accounts (Section 5)

Present Situation

FDOT, through the Florida Turnpike Enterprise, operates its electronic prepaid toll program (SunPass), which may be used on most of Florida's toll facilities and is operable on toll facilities in some other states.[24]

Under the Florida Disposition of Unclaimed Property Act,[25] except as otherwise provided in that act, all intangible property that is held, issued, or owing in the ordinary course of the holder's business and the owner fails to claim such property for more than five years after the property becomes payable or distributable is presumed unclaimed.[26] Unclaimed property is reported to the Division of Unclaimed Property in the Department of Financial Services (DFS).[27]

Unclaimed property funds are deposited into the Unclaimed Property Trust Fund. The DFS retains funds to make prompt payment of claims and to pay the cost of administering the program. All remaining funds are deposited into the State School Fund.[28]

Florida law presumes that any prepaid toll account, which has been inactive for three years, is unclaimed property. After three years, DFS must handle the account's disposition in accordance

[24] SunPass, *Frequently Asked Questions,* https://www.sunpass.com/en/support/faq.shtml (last visited February 12, 2024).
[25] Chapter 717, F.S.
[26] Section 717.102, F.S.
[27] Florida Department of Financial Services, Division of Unclaimed Property, *Why Should I Search for Unclaimed Property,* https://www.fltreasurehunt.gov/UP-Web/sitePages/About.jsp (last visited February 12, 2024).
[28] Section 717.123(1), F.S.

with Florida's Disposition of Unclaimed Property Act and FDOT must close the prepaid toll account.[29]

Effect of Proposed Changes

The bill increases from three years to ten years the length of time that a prepaid toll account must be inactive prior to it becoming unclaimed property. At the end of ten years, the inactive toll account becomes subject to the Florida Disposition of Unclaimed Property Act.

Alligator Alley Fire Station (Section 6)

Present Situation

Section 338.26, F.S., establishes Alligator Alley, a 78-mile toll road connecting Naples and Fort Lauderdale. That statute finds that because the construction of the road "contributed to the alteration of water flows in the Everglades and affected ecological patterns of the historical southern Everglades," the Legislature established a system of tolls for use of Alligator Alley to provide financial resources to help restore the natural resource values lost by constructing the highway. Collier County provides fire, rescue, and emergency management services along Alligator Alley through a fire station located at mile marker 63 (MM 63).

Current law sets forth the required uses of the revenues generated from tolls for the use of Alligator Alley, which are deposited into the STTF. Revenues must be used to reimburse outstanding contractual obligations and to operate and maintain the highway and toll facilities, including reconstruction and restoration. With regard to the fire station on Alligator Alley, the revenues must be used:

- To design and construct the fire station at MM 63, which may be used by a county or other local governmental entity to provide services to the public on Alligator Alley; and
- To reimburse a county or other local governmental entity for the direct actual costs of operating the fire station. Reimbursement occurs through an interlocal agreement effective July 1, 2019, through no later than June 30, 2027.[30]

Revenues generated annually in excess of those required to pay the above-described expenses may be transferred to the Everglades Trust Fund and used for certain environmental projects.[31]

According to FDOT's 2022 Annual Report for its Enterprise Toll Operations, for Fiscal Year 2021-2022, Alligator Alley had $31.8 million in gross toll revenue, with operating and maintenance expenses of $10.9 million and annual debt service payments of $2.8 million. The maintenance expenses include funding for rest area improvements, fire station operations, and interchange lighting projects.[32]

[29] Section 338.231(3)(c), F.S.
[30] Section 338.26(3)(a), F.S.
[31] Section 338.26(3)(b), F.S.
[32] The 2022 report is the latest posted to DOT's Turnpike Enterprise webpage and is available at https://floridasturnpike.com/wp-content/uploads/2023/02/2022-Department-owned-Facilities.pdf. (last visited February 21, 2023).

Effect of Proposed Changes

The bill provides that the interlocal agreement effective July 1, 2019, through June 20, 2027, controls until such time that the local governmental entity and FDOT enter into a new agreement or agree to extend the existing agreement. For the 2024-2025 fiscal year, the amount of reimbursement is $2 million.

By December 31, 2024, and every five years thereafter, the local governmental entity must provide to the FDOT a maintenance and operations comprehensive plan. The plan must include a current inventory of assets, including their projected service live, and area service needs; the call and response history for emergency services provided in the preceding five years on Alligator Alley, including costs; and future projects for assets and equipment, including replacement or purchase needs, and operating costs.

The local governmental entity and FDOT must review and adopt the comprehensive plan as part of the interlocal agreement.

In concurrence with projected incoming toll revenues for Alligator Alley, FDOT must include the corresponding funding needs of the comprehensive plan into FDOT's work program.

The bill also removes the current $1.4 million annual reimbursement from FDOT and provides that equipment purchased with state funds and used at the fires station, the ownership of such equipment transfers to the state at the end of the term of the interlocal agreement.

Expenditure of State Funds (Section 7)

Present Situation

State Transportation Trust Fund

Florida law establishes the State Transportation Trust Fund (STTF), which is used for transportation purposes, at FDOT's direction.[33] Such transportation purposes include maintaining and developing the state highway system and supporting various transportation related projects.[34] STTF's primary revenue sources are from state fuel taxes and fees related to motor vehicle licensing.[35] FDOT must expend moneys in the STTF in accordance with its annual budget.[36]

Prohibition on Discrimination Based on Health Care Choices

Section 381.00316, F.S., prohibits private businesses, government entities and educational institutions from requiring people to provide documentation certifying COVID-19 vaccination or post-infection recovery or wear a face mask, face shield, or other facial covering to access the

[33] Section 206.46(1), F.S.
[34] FDOT, Office of Work Program and Budget, *Florida's Transportation Tax Sources*, (2023), p. 2, https://fdotewp1.dot.state.fl.us/FMSupportApps/Documents/pra/Primer.pdf#:~:text=STTF%E2%80%99s%20primary%20revenue%20sources%20from%20state%20taxes%20and,fuel%20taxes%20and%20motor%20vehicle%20license%20related%20fees. (last visited February 20, 2024).
[35] *Id.*
[36] Section 339.08(1), F.S.

business, governmental operations or school attendance or enrollment, or to access the institution and its services.

Effect of Proposed Changes

The bill provides that the FDOT may not expend any state funds to support a project or program of a public transit provider,[37] authority,[38] public-use airport,[39] or a port[40] that violates s. 381.00316, F.S.

The bill provides that the FDOT must withhold state funds until a public transit provider, authority, public-use airport, or port are found to be in compliance with s. 381.00316, F.S.

Use of Moneys in the State Transportation Trust Fund (Sections 8 and 9)

Present Situation

Under Florida law, after the revenue derived from the registration of motor vehicles is distributed as specified and allocated as provided by law, then the remainder of such revenues are deposited into the STTF.[41] This amount deposited to the STTF must be used to fund arterial highway[42] projects identified by FDOT and may be used for projects for upgrading arterial highways with controlled access facilities[43] and constructing controlled access facilities on U.S. 19, north of the Suncoast Parkway.[44] [45]

Florida Department of Transportation Financing Corporation and Service Contract

The Florida Department of Transportation Financing Corporation (corporation) is as a nonprofit corporation established for the purpose of financing or refinancing FDOT projects.[46]

The corporation may enter into one or more service contracts with FDOT to provide services to FDOT in connection with projects approved in the work program. FDOT may enter into one or more such service contracts with the corporation and provide for payments under such contracts, subject to annual appropriation by the Legislature.[47] FDOT may enter into a service contract in

[37] Section 341.031(1), F.S., defines the term "public transit provider" to mean a public agency providing public transit service, including rail authorities.
[38] Authorities created under chapters 348, 348 and 349, F.S., include the South Florida Regional Transportation Authority, Central Florida Regional Transportation Authority, Greater Miami Expressway Agency, Tampa-Hillsborough County Expressway Authority, Central Florida Expressway Authority, and Jacksonville Transportation Authority.
[39] Section 332.004(14), F.S., defines the term "public-use airport" to mean any publicly owned airport which is used or to be used for public purposes.
[40] Section 311.09(1), F.S., enumerates the following ports: Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
[41] Section 320.20(5)(a), F.S.
[42] Section 334.03(1), F.S., defines the term "arterial road" to mean a route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, every United States numbered highway is an arterial road.
[43] See s. 339.66, F.S.
[44] See s. 339.67, F.S.
[45] Section 339.0803, F.S.
[46] Section 339.0809, F.S.
[47] Section 339.0809(4), F.S.

conjunction with the issuance of debt obligations which provide for periodic payments for debt service or other amounts payable with respect to debt obligations, plus any administrative expenses of corporation.[48]

Moving Florida Forward

As part of its Moving Florida Forward initiative, FDOT identified a selection of critical needs on state-owned roadways. Additionally, FDOT identified previously approved projects with broad community support that only lacked funding to begin construction. The goal of this initiative is to advance construction on these projects around the state that will address congestion, improve safety, ensure the resiliency of our transportation network, and enhance Florida's supply chain and economic growth.[49]

In the 2023 General Appropriations Act, the Legislature appropriated the nonrecurring sum of $4 billion from the General Revenue Fund to FDOT for Fiscal Year 2022-2023 for the Moving Florida Forward Plan to accelerate the completion of selected road projects and provide traffic congestion relief. FDOT was required to submit a budget amendment for Legislative Budget Commission approval.[50] The unexpended balance of funds appropriated remaining on June 30, 2023, reverts and is appropriated for the same purposes in the 2023-2024 fiscal year.[51]

Effect of Proposed Changes

The bill provides that the remainder of the motor vehicle fee revenues deposited into the STTF, must first be available for appropriation for payments under a service contract entered into with the corporation to fund arterial highway projects. For the corporation's bonding purposes, two or more of such projects in FDOT's adopted work program may be treated as a single project.

The bill provides that funds appropriated for payment under a service contract are available after funds pledge for payment on bonds, but before other statutorily required distributions.

The bill authorizes FDOT to enter into a service contract to finance the projects authorized for Moving Florida Forward, and subsequently adopted into FDOT's 5-year work program. Service contract payments may not exceed 7 percent of the funds deposited into the STTF in each fiscal year. The annual payments under such service contracts must be included in FDOT's work program and legislative budget request. FDOT must ensure that annual payments are programmed for the life of the service contract before execution of the service contract and must remain programmed until fully paid.

[48] Section 339.0809(13), F.S.
[49] FDODT, *Moving Florida Forward*, https://www.fdot.gov/movingfloridaforward/landing (last visited February 26, 2024).
[50] This was done in budget amendment EOG # 2024-0112 at the September 8, 2023, meeting of the Legislative Budget Commission. http://www.leg.state.fl.us/Data/Committees/Joint/JLBC/Meetings/Packets/090823.pdf (last visited February 26, 2024).
[51] Chapter 2023-239, section 215

Small County Outreach Program (Section 10)

Present Situation

Section 339.2818, F.S., creates the Small County Outreach Program (SCOP) within FDOT. SCOP's purpose of is to assist small county governments in repairing or rehabilitating county bridges, paving unpaved roads, addressing road-related drainage improvements, resurfacing or reconstructing county roads, or constructing capacity or safety improvements to county roads.[52]

For the purposes of the SCOP, the term "small county" means any county that has a population of 200,000 or less as determined by the most recent official estimate pursuant to s. 186.901, F.S.[53] Currently, 39 counties are eligible for the SCOP funding.[54]

Small counties are eligible to compete for the SCOP funds for projects on county roads. The FDOT must fund 75 percent of the cost of projects on county roads funded under the SCOP.[55]

The following criteria are used to prioritize road projects for the SCOP funding:

- The primary criterion is the physical condition of the road.
- As secondary criteria the FDOT may include:
  - Whether a road is used as an evacuation route;
  - Whether a road has high levels of agricultural travel;
  - Whether a road is considered a major arterial route;
  - Whether a road is considered a feeder road;
  - Information as evidenced to FDOT through an established pavement management plan; and
  - Other criteria related to the impact of a project on the public road system or on the state or local economy.[56]

FDOT is authorized to administer contracts on behalf of a county selected to receive funding for a project. All funded projects must be included in FDOT's work program.[57]

Everglades Agricultural Area

The Everglades Agricultural Area is an approximately 1,160 square-mile area of highly productive agricultural land located south of Lake Okeechobee.[58] While most of the Everglades Agricultural Area is in Palm Beach County, this area extends to Martin, Hendry, and Glades counties.[59]

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[52] Section 339.2818(1), F.S.
[53] Section 339.2818(2), F.S.
[54] FDOT, *Small County Outreach Program,* https://www.fdot.gov/programmanagement/lp/scop/default.shtm (Last visited February 12, 2024).
[55] Section 339.2818(4)(a), F.S.
[56] Section 339.175(4)(c), F.S.
[57] Section 339.175(5), F.S.
[58] Lake Okeechobee Business Alliance, *The Everglades Agricultural Area*, https://www.lakeoalliance.org/everglades-agricultural-area, (last visited February 12, 2024). The Everglades Agricultural Area is defined in s. 373.4592(15), F.S.
[59] University of Florida, IFAS Extension, *Explore the Everglades Agricultural Area*, https://nwdistrict.ifas.ufl.edu/ampic2022/2022/07/20/explore-the-everglades-agricultural-area/ (last visited February 12, 2024).

Peace River Basin

The Peace River Basin encompasses more than 2,300 square miles. Its western boundary includes portions of Hillsborough, Manatee and Sarasota counties and portions of Highlands and Glades counties on the east. The basin includes major portions of Polk, Hardee, DeSoto and Charlotte counties.[60]

Suwannee River Basin

The Suwannee River Basin, drains over 11,000 square miles of land in Georgia and Florida.[61] Florida's portion of basin includes all or a portion of Madison, Suwannee, Columbia, Union, Alachua, Gilchrist, Levy, Dixie, and Lafayette counties.[62]

Effect of Proposed Changes

The bill provides that subject to specific appropriation, in addition to funds appropriated for the SCOP, a local government located either wholly or partially within the Everglades Agricultural Area, the Peace River Basin, or the Suwanee River Basin may compete for additional funding using the SCOP criteria, at up to 100 percent of the project costs for state or county roads used primarily as farm-to-market connections between rural agricultural areas and market distribution centers, excluding capacity improvement projects.

Public Transit Lane Repurposing (Section 11)

Present Situation

Currently, there are no provisions in Florida law regarding lane elimination or lane repurposing for public transit projects.

Effect of Proposed Changes

The bill provides that any lane elimination or lane repurposing, recommendation, relating to public transit projects must be approved by a two-thirds vote of the transit authority board and a public meeting to be held after a 30-day public notice.

Public Transit Eminent Domain (Section 11)

Present Situation

Eminent domain refers to the power of the government to take private property and convert it into public use, referred to as a taking. The Fifth Amendment of the United States Constitution

[60] Southwest Florida Water Management District, *Peace River Watershed Excursion*, https://www.swfwmd.state.fl.us/watersheds/peace-river/where-the-river-begins (last visited February 12, 2024).
[61] University of Georgia, River Basin Center, *Suwannee*, https://rivercenter.uga.edu/resources/river-basins-of-georgia/suwannee/#:~:text=Location%3A%20Suwannee%20River%2C%20Big%20Shoals,land%20in%20Georgia%20and%20Florida. (last visited February 12, 2024).
[62] Springs of the Lower Suwannee River Basin, 1999, https://fcit.usf.edu/florida/maps/pages/9000/f9072/f9072.htm (last visited February 12, 2024).

provides that the government may only exercise this power if they provide just compensation to the property owners.[63]

Chapter 73, F.S., establishes Florida's eminent domain law. However, it does not appear that there are specific provisions for public transit providers wishing to exercise eminent domain.

Effect of Proposed Changes

The bill provides that any action of eminent domain for acquisition of public transit facilities carried out by a public transit provider must be discussed by the public transit provider at a public meeting to be held after a 30-day public notice.

New Starts Transit Program - Reallocation of Funds (Section 11)

Present Situation

New Starts Transit Program

FDOT's New Starts Transit Program assists local governments in the development of fixed guideway and bus rapid transit projects. Ten percent of FDOT's portion of the documentary stamp tax is allocated to New Starts,[64] along with 3.4 percent of the initial registration fee for motor vehicles.[65]

This program is a matching program to leverage local or federal funds.[66] However, according to FDOT, due to local governments' inability at times to meet state and federal eligibility requirements or provide a funding commitment for the required matching funds, projects identified for the New Starts Transit Program may not always be programmed into FDOT's work program, which results in the annually appropriated funds not being obligated and carried forward to the next fiscal year.

Strategic Intermodal System

The Strategic Intermodal System (SIS) is Florida's high priority network of transportation facilities important to its economy and mobility. Established in 2003, to focus Florida's limited transportation resources on the facilities most significant for interregional, interstate, and international travel. The SIS is the state's highest priority for transportation capacity investments and a primary focus for implementing the Florida Transportation Plan.[67]

[63] Cornell Law School, Legal Information Institute, *Eminent Domain*, https://www.law.cornell.edu/wex/eminent_domain#:~:text=Eminent%20domain%20refers%20to%20the,compensation%20to%20the%20property%20owners. (last visited February 26, 2024).
[64] Section 201.15(4)(a)1., F.S.
[65] Section 320.072(4)(b), F.S.
[66] Florida Transportation Commission, *New Starts Transit Program*, http://www.ftc.state.fl.us/documents/Presentations/New_Starts_Transit_Program_(5-23-06).pdf (last visited Feb. 7, 2024).
[67] FDOT, *Florida's Strategic Intermodal System,* https://www.fdot.gov/planning/systems/sis (last visited February 20, 2024)

Effect of Proposed Changes

The bill provides that the unallocated New Starts Transit Program funds remaining after June 30, 2024, must be reallocated for the purpose of the SIS within the STTF. This provision expires June 30, 2026.

Public Transit Marketing and Advertising Standards (Section 11)

Present Situation

Under Florida law, each fiscal year, a minimum of 15 percent of all state revenues deposited into the STTF are committed annually by the FDOT for public transportation projects, including public transit projects.[68]

Effect of Proposed Changes

The bill provides that as a condition of receiving funds from FDOT, a public transit provider may not expend FDOT's funds for marketing or advertising activities, including any wrap, tinting, or paint on a bus, commercial motor vehicle, or motor vehicle that is owned, leased, or operated by a public transit provider and is limited to displaying a brand or logo of the public transit provider, the official seal of the jurisdictional government entity, or a state agency public service announcement.

FDOT must incorporate the above marketing and advertising guidelines in the public transit grant agreement entered into with each public transit provider.

Public Transit Window Tinting (Section 11)

Present Situation

Section 316.2954, F.S., provides that a person may not operate any motor vehicle with any sun screening material, or other product or material which has the effect of making the window nontransparent or which would alter the window's color, increase its reflectivity, or reduce its light transmittance. Specific requirements are provided in that statute.

Effect of Proposed Changes

The bill provides that any new wrap, tinting, paint, medium, or advertisement on the passenger windows of a vehicle used by a public transit provider may not be darker than the legally allowed window tinting requirements for motor vehicles.

Public Transit Performance and Productivity Measures (Section 12)

Present Situation

A public transit provider is statutorily defined as a public agency providing public transit service, including rail authorities.[69] The term "public transit" is defined to mean the transporting of

[68] Section 206.46(3), F.S. The funding minimum is for public transportation projects that are in accordance with ch. 311, ss. 332.003-332.007, ch. 341, and ch. 343 of F.S.
[69] Section 341.031(3), F.S.

people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as "paratransit."[70] Each public transit provider must establish productivity and performance measures, which must be approved by the FDOT and which must be selected from measures developed pursuant to s. 341.041(3), F.S.[71] [72]

Effect of Proposed Changes

The bill defines the term "general administrative costs" to include, but are not limited costs related to transit service development, injuries and damages, safety, personnel administration, legal services, data processing, finance and accounting, purchasing and stores, engineering, real estate management, office management and services, customer service, promotion, market research and planning. The term does not include insurance costs.

The bill defines the term "public transit provider" to mean a public agency providing public transit service, including the Central Florida Regional Transportation Authority and the Jacksonville Transportation Authority. The bill exempts rail transit providers such as the South Florida Regional Transportation Authority and the Central Florida Commuter Rail Commission.

Tier I provider means a recipient that owns, operates, or manages either 101 or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or rail transit.[73]

Tier II provider means a recipient that owns, operates, or manages 100 or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, a subrecipient under the 5311 Rural Area Formula Program, or any American Indian tribe.[74]

Beginning November 1, 2024, and annually thereafter, each public transit provider must, during a publicly noticed meeting:

- Certify that its budgeted and actual administrative costs are not greater than 20 percent above the annual state average of administrative costs for its tier.
- Present a line-item budget report of its budgeted and actual general administrative costs.

[70] Section 341.031(6), F.S. Section 341.031(5), F.S., defines the term "paratransit" to mean those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride" buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

[71] Section 341.071(2), F.S.

[72] Section 341.041(3), F.S., provides that FDOT must develop, publish, and administer state measures concerning system management, performance, productivity, cost distribution, and safety of governmentally owned public transit systems and privately owned or operated systems financed wholly or in part by state funding. Such measures must be developed jointly with representatives of affected publicly owned transit systems and in coordination with affected privately owned systems, with full consideration given to nationwide industry norms.

[73] This is as defined in 49 C.F.R. part 625.

[74] *Id.*

- Disclose all salaried executive-management-level employee's total compensation packages, ridership performance and metrics, and any gifts accepted in exchange for contracts. This disclosure must be posted annually on the public transit provider's website.

To support compliance, the bill requires FDOT to determine the state average of administrative costs by calculating the annual administrative costs for all the public transit providers in this state annually by March 31 to inform the provider's following fiscal year budget. Upon review and certification by FDOT, costs budgeted and expended in association with nontransit-related engineering and construction may be excluded.

The bill provides that a year-over-year cumulative increase of 5 percent or more in general administrative costs must be reviewed before the start of the next fiscal year and must be reviewed and approved by FDOT before approval by the public transportation provider's governing board.

Florida Rail Enterprise (Section 13)

Present Situation

Sections 341.8201 through 341.842, F.S., contain the Florida Rail Enterprise Act.[75] The Florida Rail Enterprise (enterprise) within FDOT must locate, plan, design, finance, construct, maintain, own, operate, administer, and manage Florida's high-speed rail system.[76] [77]

In addition to the powers granted to FDOT, the enterprise has full authority to exercise all powers granted to it under ch. 341, F.S. Authorized powers include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system, to acquire corridors, and to coordinate the development and operation of publicly funded passenger rail systems in the state.[78]

Effect of Proposed Changes

The bill adds to the enterprise's powers and duties by giving it the authority to preserve future rail corridors[79] and rights of way in coordination with FDOT's planning of the State Highway System.

[75] Section 341.8201, F.S.
[76] Section 341.822(1), F.S.
[77] Section 341.8203(4), F.S., defines the term "high-speed rail system" to mean any high-speed fixed guideway system for transporting people or goods, which system is, by definition of the United States Department of Transportation, reasonably expected to reach speeds of at least 110 miles per hour, including, but not limited to, a monorail system, dual track rail system, suspended rail system, magnetic levitation system, pneumatic repulsion system, or other system approved by the enterprise. The term includes a corridor, associated intermodal connectors, and structures essential to the operation of the line, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, and rail stations and also includes facilities or equipment used exclusively for the purposes of design, construction, operation, maintenance, or the financing of the high-speed rail system.
[78] Section 341.822(2)(a), F.S.
[79] Section 341.301(8), F.S., defines the term "rail corridor" to mean a linear contiguous strip of real property that is used for rail service. The term includes the corridor and structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power

Effective Date (Section 14)

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides for $15 million in recurring funds from the STTF to be made available annually for the Intermodal Logistics Center Infrastructure Support Program. This will result in a positive fiscal impact to intermodal logistics centers and related businesses.

C. Government Sector Impact:

The bill increases the amount of state funds FDOT pays Collier County to support a fire station on Alligator Alley.

The bill may have a positive fiscal impact on the Florida Department of Transportation Financing Corporation as it provides that specified revenues deposited into the STTF must first be available for appropriation for payments under a service contract entered

relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.

into with the corporation to fund arterial highway projects. This provision may also reduce bond financing costs.

Subject to specific appropriation, the bill authorizes local governments in specified areas to seek financial assistance in paying for projects on state and county roads primarily used for agricultural purposes.

The bill may have a negative fiscal impact on any public transit provider, authority, public-use airport, or a port that is found to be in violation of s. 381.00316, F.S.

Public transit providers may experience changes in their cost structures associated with complying with provisions in the bill limiting their administrative costs and certifying that their administrative costs are within the limits provided for in the bill.

FDOT may incur costs associated with reviewing public transit provider general administrative costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.23, 311.101, 334.046, 338.231, 338.26, 339.08, 339.0803, 339.0809, 339.2818, 341.051, 341.071 and 341.822.

The bill creates the following section of the Florida Statutes: 334.61.

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 Fiscal Policy on February 27, 2024:
The committee substitute:

- Updates FDOT's mission, goals, and objectives.
- Authorizes FDOT to enter into service contracts with the FDOT Financing Corporation for specified projects and requires payments under such contracts to be included in FDOT's work program and legislative budget request.
- Requires lane elimination or lane repurposing for a public transit project to be approved by a two-thirds vote of the transit authority's board.
- Requires eminent domain actions for the acquisition of public transit facilities to be discussed by the public transit provider at a public meeting.

- Revises provisions regarding public transit administrative costs, including revising the definition of "general administrative costs", revises employee compensation disclosure to specified employees, provides for the exclusion of specified non-transit related services upon FDOT's review and certification.
- Requires FDOT to review and approve a 5 percent or more year-over-year cumulative increase in a public transit provider's administrative costs.

CS by Appropriations Committee on Transportation, Tourism, and Economic Development on February 20, 2024:
The committee substitute:
- Removes a landscaping expenditure provision from the bill.
- Updates FDOT's statutory program areas to reflect its current organizational structure.
- Requires public notice and input prior to a governmental entity repurposing one or more existing traffic lanes.
- Prohibits FDOT from spending state funds on transportation entities violating certain statutory requirements.
- Reallocates specified New Starts Transit funds to the SIS for a two year period.
- Revises provisions to relating to public transit provider administrative costs to compare providers by fleet size and to exempt rail transit providers.
- Prohibits public transit providers from spending FDOT funds on certain marketing or advertising activities.
- Prohibits window tinting on public transit buses from being any darker than what is legally allowed for motor vehicles.

CS by Transportation on February 6, 2023:
The committee substitute:
- Requires, beginning in the 2024-2025 fiscal year, $15 million in recurring revenue from the STTF must be made available for the Intermodal Logistics Center Infrastructure Support Program.
- Provides that specified funds deposited into the State Transportation Trust Fund must first be used for the payment of service contracts with the Florida Department of Transportation Financing Corporation.
- Provides that, subject to appropriation, a local government within specified areas may compete for additional funding using the Small County Outreach Program criteria for state or county roads used primarily for agricultural purposes.
- Revises provisions in the bill regarding the administrative costs of public transit providers to limit administrative costs to 20 percent above the statewide average.
- Requires public transit providers to disclose employee compensation, ridership performance and metrics, and any gifts accepted in exchange for contracts.
- Clarifies the rail corridor provision by providing that the Florida Rail Enterprise is authorized to preserve future rail corridors and rights of way.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete lines 121 - 309
and insert:
Section 3. Section 334.046, Florida Statutes, is amended to read:
334.046 Department mission, goals, and objectives.—
(1) The department shall consider the following prevailing

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principles when ~~to be considered in~~ planning and developing the state's multimodal ~~an integrated, balanced statewide~~ transportation system ~~are~~: preserving Florida's ~~the existing~~ transportation infrastructure; supporting its ~~enhancing Florida's~~ economic competitiveness; promoting the efficient movement of people and goods; and preserving Florida's quality of life of this state ~~improving travel choices to ensure mobility~~.

(2) The mission of the Department of Transportation shall be to provide a safe statewide transportation system that promotes the efficient movement ~~ensures the mobility~~ of people and goods, supports the state's ~~enhances~~ economic competitiveness, prioritizes Florida's environment and natural resources ~~prosperity~~, and preserves the quality of life and connectedness of the state's ~~our environment and~~ communities.

(3) The ~~department shall document in the Florida Transportation Plan, in accordance with s. 339.155 and based upon the~~ prevailing principles outlined in this section shall be incorporated into all ~~of preserving the existing transportation infrastructure, enhancing Florida's economic competitiveness, and improving travel choices to ensure mobility, the~~ goals and objectives that provide statewide policy guidance for accomplishing the department's mission, including the Florida Transportation Plan outlined in s. 339.155.

(4) At a minimum, the department's goals shall address the following prevailing principles:~~.~~

(a) *Maintaining investments* ~~*Preservation*~~.~~—~~Protecting the state's transportation infrastructure investment, which~~.~~ ~~Preservation~~ includes:

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1. Ensuring that 80 percent of the pavement on the State Highway System meets department standards;

2. Ensuring that 90 percent of department-maintained bridges meet department standards; and

3. Ensuring that the department achieves 100 percent of the acceptable maintenance standard on the state highway system.

(b) *Economic competitiveness.*—Ensuring that the state has a clear understanding of the return on investment and economic impacts ~~consequences~~ of transportation infrastructure investments~~,~~ and how such investments affect the state's economic competitiveness. The department must develop a macroeconomic analysis of the linkages between transportation investment and economic performance, as well as a method to quantifiably measure the economic benefits of the district-work-program investments. Such an analysis must analyze:

1. The state's and district's economic performance relative to the competition.

2. The business environment as viewed from the perspective of companies evaluating the state as a place in which to do business.

3. The state's capacity to sustain long-term growth.

(c) *Connected transportation system* ~~*Mobility*~~.—Ensuring a cost-effective, statewide, interconnected transportation system that provides for the most efficient and effective multimodality and mobility.

(d) *Preserving Florida's natural resources and quality of life.*—Prioritizing Florida's natural resources and the quality of life of its communities.

Section 4. Section 334.61, Florida Statutes, is created to

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read:

334.61 Traffic lane repurposing.—

(1) Whenever a governmental entity proposes any project that will repurpose one or more existing traffic lanes, the governmental entity shall include a traffic study to address any potential adverse impacts of the project, including, but not limited to, changes in traffic congestion and impacts on safety.

(2) If, following the study required by subsection (1), the governmental entity elects to continue with the design of the project, it must notify all affected property owners, impacted municipalities, and the counties in which the project is located at least 180 days before the design phase of the project is completed. The notice must provide a written explanation regarding the need for the project, information on how to review the traffic study required by subsection (1), and indicate that all affected parties will be given an opportunity to provide comments to the proposing entity regarding potential impacts of the change.

(3) The governmental entity shall hold at least one public meeting, with at least 30 days prior notice, before completing the design phase of the project in the jurisdiction where the project is located. At the public meeting, the governmental entity shall explain the purpose of the project and receive public input, including possible alternatives, to determine the manner in which the project will affect the community.

(4) The governmental entity shall review all comments from the public meeting and take the comments and any alternatives presented during the meeting into consideration in the final design of the project.

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Section 5. Paragraph (c) of subsection (3) of section 338.231, Florida Statutes, is amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.—The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

(3)

(c) Notwithstanding any other provision of law to the contrary, any prepaid toll account of any kind which has remained inactive for 10 ~~3~~ years is ~~shall be~~ presumed unclaimed and its disposition shall be handled by the Department of Financial Services in accordance with all applicable provisions of chapter 717 relating to the disposition of unclaimed property, and the prepaid toll account shall be closed by the department.

Section 6. Subsection (5) is added to section 339.08, Florida Statutes, to read:

339.08 Use of moneys in State Transportation Trust Fund.—

(5) The department may not expend any state funds as described in s. 215.31 to support a project or program of any of the following entities:

(a) A public transit provider as defined in s. 341.031;

(b) An authority created pursuant to chapter 343, chapter


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348, or chapter 349;

(c) A public-use airport as defined in s. 332.004; or

(d) A port listed in s. 311.09(1),

which is found in violation of s. 381.00316. The department shall withhold state funds until the public transit provider, authority, public-use airport, or port is found in compliance with s. 381.00316.

Section 7. Section 339.0803, Florida Statutes, is amended to read:

339.0803 Allocation of increased revenues derived from amendments to s. 320.08 by ch. 2019-43.—

(1) Beginning in the 2021-2022 fiscal year and each fiscal year thereafter, funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 320.08 made by chapter 2019-43, Laws of Florida, and deposited into the fund pursuant to s. 320.20(5)(a) must be used to fund arterial highway projects identified by the department in accordance with s. 339.65 and may be used for projects as specified in ss. 339.66 and 339.67. For purposes of the funding provided in this section, the department shall prioritize use of existing facilities or portions thereof when upgrading arterial highways to limited or controlled access facilities. However, this section does not preclude use of the funding for projects that enhance the capacity of an arterial highway. The funds allocated as provided in this section shall be in addition to any other statutory funding allocations provided by law.

(2) Revenues deposited into the State Transportation Trust Fund pursuant to s. 320.20(5)(a) shall first be available for

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appropriation for payments under a service contract entered into with the Florida Department of Transportation Financing Corporation pursuant to s. 339.0809(4) to fund arterial highway projects. For the corporation's bonding purposes, two or more such projects in the department's adopted work program may be treated as a single project.

Section 8. Subsection (13) of section 339.0809, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

339.0809 Florida Department of Transportation Financing Corporation.—

(13) The department may enter into a service contract in conjunction with the issuance of debt obligations as provided in this section which provides for periodic payments for debt service or other amounts payable with respect to debt obligations, plus any administrative expenses of the Florida Department of Transportation Financing Corporation. Funds appropriated for payments under a service contract shall be available after funds pledged to payment on bonds, but before other statutorily required distributions.

(14) The department may enter into a service contract to finance the projects authorized in s. 215 of ch. 2023-239, Laws of Florida, and in budget amendment EOG# 2024-B0112, and subsequently adopted into the 5-year work program. Service contract payments may not exceed 7 percent of the funds deposited in the State Transportation Trust Fund in each fiscal year. The annual payments under such service contract shall be included in the department's work program and legislative budget request developed pursuant to s. 339.135. The department shall

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ensure that the annual payments are programmed for the life of the service contract before execution of the service contract and shall remain programmed until fully paid.

Section 9. Subsection (8) is added to section 339.2818, Florida Statutes, to read:

339.2818 Small County Outreach Program.—

(8) Subject to a specific appropriation in addition to funds appropriated for projects under this section, a local government either wholly or partially within the Everglades Agricultural Area as defined in s. 373.4592(15), the Peace River Basin, or the Suwannee River Basin may compete for additional funding using the criteria listed in paragraph (4)(c) at up to 100 percent of project costs on state or county roads used primarily as farm-to-market connections between rural agricultural areas and market distribution centers, excluding capacity improvement projects.

Section 10. Subsection (6) of section 341.051, Florida Statutes, is amended, paragraphs (c) and (d) are added to subsection (2), and subsection (8) is added to that section, to read:

341.051 Administration and financing of public transit and intercity bus service programs and projects.—

(2) PUBLIC TRANSIT PLAN.—

(c) Any lane elimination or lane repurposing, recommendation, or application relating to public transit projects must be approved by a two-thirds vote of the transit authority board in a public meeting to be held after a 30-day public notice.

(d) Any action of eminent domain for acquisition of public


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transit facilities carried out by a public transit provider must be discussed by the public transit provider at a public meeting to be held after a 30-day public notice.

(6)(a) ANNUAL APPROPRIATION.—Funds paid into the State Transportation Trust Fund pursuant to s. 201.15 for the New Starts Transit Program are hereby annually appropriated for expenditure to support the New Starts Transit Program.

(b) The remaining unallocated New Starts Transit Program funds as of June 30, 2024 shall be reallocated for the purpose of the Strategic Intermodal System within the State Transportation Trust Fund. This paragraph expires June 30, 2026.

(8) EXTERIOR VEHICLE WRAP, TINTING, PAINT, MARKETING, AND ADVERTISING.—

(a) As a condition of receiving funds from the department, a public transit provider may not expend department funds for marketing or advertising activities, including any wrap, tinting, paint, or other medium displayed, attached, or affixed on a bus, commercial motor vehicle, or motor vehicle that is owned, leased, or operated by a public transit provider and is limited to displaying a brand or logo of the public transit provider, the official seal of the jurisdictional governmental entity, or a state agency public service announcement.

(b) The department shall incorporate guidelines for the marketing or advertising activities allowed under paragraph (a) in the public transportation grant agreement entered into with each public transit provider.

(c) Any new wrap, tinting, paint, medium, or advertisement on the passenger windows of a vehicle used by a public transit provider may not be darker than the legally allowed window

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tinting requirements as provided in s. 316.2954.

For purposes of this section, the term "net operating costs" means all operating costs of a project less any federal funds, fares, or other sources of income to the project.

Section 11. Subsection (4) is added to section 341.071, Florida Statutes, to read:

341.071 Transit productivity and performance measures; reports.—

(4)(a) As used in this subsection, the term:

1. "General administrative costs" includes, but is not limited to, costs related to transit service development, injuries and damages, safety, personnel administration, legal services, data processing, finance and accounting, purchasing and stores, engineering, real estate management, office management and services, customer service, promotion, market research, and planning. The term does not include insurance costs.

2. "Public transit provider" means a public agency providing public transit service, including an authority created pursuant to part II of chapter 343 or chapter 349. The term does not apply to the Central Florida Commuter Rail Commission or the authority created pursuant to part I of chapter 343.

3. "Tier 1 provider" has the same meaning as in 49 C.F.R. part 625.

4. "Tier 2 provider" has the same meaning as in defined in 49 C.F.R. part 625.

(b) Beginning November 1, 2024, and annually thereafter, each public transit provider, during a publicly noticed meeting,

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shall:

1. Certify that its budgeted and general administration costs are not greater than 20 percent above the annual state average of administrative costs for its respective tier.

2. Present a line-item budget report of its budgeted and actual general administration costs.

3. Disclose all salaried executive-management-level employees' total compensation packages, ridership performance and metrics, and any gift as defined in s. 112.312 accepted in exchange for contracts. This disclosure shall be posted annually on the public transit provider's website.

(c) To support compliance with paragraph (b), the department shall determine, by tier, the annual state average of general administrative costs by determining the percentage of the total operating budget that is expended on general administration costs in this state annually by March 31 to inform the public transit provider's budget for the following fiscal year. Upon review and certification by the department, costs budgeted and expended in association with nontransit-related engineering and construction services may be excluded.

(d) A year-over-year cumulative increase of 5 percent or more in general administration costs must be reviewed before the start of the next fiscal year and must be reviewed and approved by the department before approval by the public transportation provider's governing board.

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

And the title is amended as follows:

Delete lines 14 - 66

and insert:


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tentative work program; amending s. 334.046, F.S.; revising provisions relating to the department's mission, goals, and objectives; creating s. 334.61, F.S.; requiring governmental entities that propose certain projects to conduct a traffic study; requiring notice to property owners, impacted municipalities, and counties affected by such projects within a specified timeframe; providing notice requirements; requiring such governmental entities to hold a public meeting before completion of the design phase of such projects; providing requirements for such public meetings; requiring such governmental entities to review and take into consideration comments and alternatives presented in public meetings in the final project design; amending s. 338.231, F.S.; extending the length of time before which an inactive prepaid toll account becomes unclaimed property; amending s. 339.08, F.S.; prohibiting the department from expending state funds to support a project or program of specified entities; requiring the department to withhold state funds until such entities are in compliance with a specified provision; amending s. 339.0803, F.S.; prioritizing availability of certain revenues deposited into the State Transportation Trust Fund for payments under service contracts with the Florida Department of Transportation Financing Corporation to fund arterial highway projects; providing that two or more such projects may be treated as a single project for certain purposes;

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amending s. 339.0809, F.S.; specifying availability of funds appropriated for payments under a service contract with the corporation; authorizing the department to enter into service contracts to finance certain projects; providing requirements for annual service contract payments; requiring the department, before execution of a service contract, to ensure that annual payments are programmed for the life of the contract and to ensure that they remain programmed until fully paid; amending s. 339.2818, F.S.; authorizing, subject to appropriation, a local government within a specified area to compete for funding using specified criteria on specified roads; providing an exclusion; amending s. 341.051, F.S.; providing voting and meeting notice requirements for specified public transit projects; providing meeting notice requirements for discussion of specified actions by a public transit provider; requiring that certain unallocated funds for the New Starts Transit Program be reallocated for the purpose of the Strategic Intermodal System; limiting, as a condition of receiving state funds, the displays marketing or advertising a public transit provider may display on certain vehicles; requiring the department to incorporate guidelines in the public transportation grant agreement entered into with each public transit provider; prohibiting certain media on passenger windows of public transit provider vehicles from being darker than certain window tinting requirements;

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amending s. 341.071, F.S.; defining terms; beginning on a specified date and annually thereafter, requiring each public transit provider to take specified actions during a publicly noticed meeting; requiring that a certain disclosure be posted on public transit providers' websites; requiring a specified increase in general administration costs to be reviewed and approved by certain entities; amending

525088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (DiCeglie) recommended the following:

Senate Amendment to Amendment (584592) (with title amendment)

Between lines 117 and 118
insert:

Section 6. Paragraph (a) of subsection (3) of section 338.26, Florida Statutes, is amended to read:

338.26 Alligator Alley toll road.—

(3)(a) Fees generated from tolls shall be deposited in the State Transportation Trust Fund and shall be used:

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1. To reimburse outstanding contractual obligations;

2. To operate and maintain the highway and toll facilities, including reconstruction and restoration;

3. To pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994; and

4. By interlocal agreement ~~effective July 1, 2019, through no later than June 30, 2027~~, to reimburse a local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on Alligator Alley, which shall be used by the local governmental entity to provide fire, rescue, and emergency management services exclusively to the public on Alligator Alley. The local governmental entity must contribute 10 percent of the direct actual operating costs.

a. The interlocal agreement effective July 1, 2019, through June 30, 2027, shall control until such time that the local governmental entity and the department enter into a new agreement or agree to extend the existing agreement. For the 2024-2025 fiscal year, the amount of reimbursement shall be $2 million.

b. By December 31, 2024, and every 5 years thereafter, the local governmental entity shall provide a maintenance and operations comprehensive plan to the department. The comprehensive plan must include a current inventory of assets, including their projected service life, and area service needs; the call and response history for emergency services provided in the preceding 5 years on Alligator Alley, including costs; and future projections for assets and equipment, including

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replacement or purchase needs, and operating costs.

c. The local governmental entity and the department shall review and adopt the comprehensive plan as part of the interlocal agreement.

d. In accordance with projected incoming toll revenues for Alligator Alley, the department shall include the corresponding funding needs of the comprehensive plan in the department's work program ~~The amount of reimbursement to the local governmental entity may not exceed $1.4 million in any state fiscal year~~.

e. At the end of the term of the interlocal agreement, the ownership and title of all fire, rescue, and emergency equipment purchased with state funds and used at the fire station during the term of the interlocal agreement transfers to the state.

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

And the title is amended as follows:

Between lines 316 and 317

insert:

338.26, F.S.; revising the date by which fees generated from tolls deposited into the State Transportation Trust Fund must be used to reimburse a local governmental entity for certain costs of operating a specified fire station; providing that a specified interlocal agreement related to the Alligator Alley toll road controls the use of certain State Transportation Trust Fund moneys until the local governmental entity and the department enter into a new agreement or agree to extend the existing agreement; specifying the amount of reimbursement for

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the 2024-2025 fiscal year; requiring the local governmental entity, by a specified date and at specified intervals thereafter, to provide a maintenance and operations comprehensive plan to the department; providing requirements for the comprehensive plan; requiring the local governmental entity and the department to review and adopt the comprehensive plan as part of the interlocal agreement; requiring the department, in accordance with certain projections, to include the corresponding funding needs in the department's work program; requiring that ownership and title of certain equipment purchased with state funds and used at a specified fire station during the term of the interlocal agreement transfer to the state at the end of the term of the agreement; amending s.

By the Appropriations Committee on Transportation, Tourism, and Economic Development; the Committee on Transportation; and Senator DiCeglie

606-03522-24 20241226c2

A bill to be entitled

An act relating to the Department of Transportation; amending s. 20.23, F.S.; revising the list of areas of program responsibility within the Department of Transportation; deleting the requirement that the secretary of the department appoint the department's inspector general and that he or she be directly responsible to the secretary; amending s. 311.101, F.S.; requiring that a specified amount of recurring funds from the State Transportation Trust Fund be made available for the Intermodal Logistics Center Infrastructure Support Program; requiring the department to include specified projects in its tentative work program; creating s. 334.61, F.S.; requiring a governmental entity that proposes certain projects to conduct a traffic study; requiring notice to property owners, impacted municipalities, and counties affected by such projects within a specified timeframe; providing notice requirements; requiring such governmental entities to hold a public meeting before completion of the design phase of such projects; providing requirements for such public meetings; requiring such governmental entities to review and take into consideration comments and alternatives presented in public meetings in the final project design; amending s. 338.231, F.S.; extending the length of time before which an inactive prepaid toll account becomes unclaimed property; amending s. 339.08, F.S.; prohibiting the department from

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606-03522-24 20241226c2

expending state funds to support a project or program of specified entities; requiring the department to withhold state funds until such entities are in compliance with a specified provision; amending s. 339.0803, F.S.; prioritizing availability of certain revenues deposited into the State Transportation Trust Fund for payments under service contracts with the Florida Department of Transportation Financing Corporation to fund arterial highway projects; providing that two or more of such projects may be treated as a single project for certain purposes; amending s. 339.0809, F.S.; specifying priority of availability of funds appropriated for payments under a service contract with the corporation; amending s. 339.2818, F.S.; authorizing, subject to appropriation, a local government within a specified area to compete for funding using specified criteria on specified roads; providing an exclusion; amending s. 341.051, F.S.; requiring that certain unallocated funds for the New Starts Transit Program remaining as of a specified date be reallocated to the Strategic Intermodal System; providing for expiration; amending s. 341.071, F.S.; defining terms; requiring each public transit provider to certify annually that its budgeted and actual administrative costs are not greater than a specified amount; requiring the disclosure and posting of specified information; requiring the department to make a certain annual determination for a specified purpose; creating s. 341.072, F.S.; prohibiting a

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public transit provider, as a condition of receiving state funds, from expending state funds for certain marketing or advertising activities; requiring the department to incorporate guidelines in the public transportation grant agreement entered into with each public transit provider; providing that certain media on passenger windows of public transit provider vehicles comply with a specified provision; amending s. 341.822, F.S.; revising the powers of the Florida Rail Enterprise; providing an effective date.

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

Section 1. Paragraphs (b) and (d) of subsection (3) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(3)

(b) The secretary may appoint positions at the level of deputy assistant secretary or director which the secretary deems necessary to accomplish the mission and goals of the department, including, but not limited to, the areas of program responsibility provided in this paragraph, each of whom shall be appointed by and serve at the pleasure of the secretary. The secretary may combine, separate, or delete offices as needed in consultation with the Executive Office of the Governor. The department's areas of program responsibility include, but are not limited to all of the following:

1. Administration.~~;~~

2. Planning.~~;~~

3. Modal development. ~~Public transportation;~~

4. Design.~~;~~

5. Highway operations.~~;~~

6. Right-of-way.~~;~~

7. Toll operations.~~;~~

8. Transportation technology.

9.~~8.~~ Information systems.~~;~~

10.~~9.~~ Motor carrier weight inspection.~~;~~

11.~~10.~~ Work program development ~~Management~~ and budget.~~;~~

12.~~11.~~ Comptroller.~~;~~

13.~~12.~~ Construction.~~;~~

14. Statewide corridors.

15.~~13.~~ Maintenance.~~; and~~

16. Forecasting and performance.

17. Emergency management.

18. Safety.

19.~~14~~. Materials.

~~(d) The secretary shall appoint an inspector general pursuant to s. 20.055 who shall be directly responsible to the secretary and shall serve at the pleasure of the secretary.~~

Section 2. Present subsection (7) of section 311.101, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(7) Beginning with the 2024-2025 fiscal year through the 2029-2030 fiscal year, $15 million in recurring funds shall be

made available from the State Transportation Trust Fund for the program. The Department of Transportation shall include projects proposed to be funded under this section in the tentative work program developed pursuant to s. 339.135(4).

Section 3. Section 334.61, Florida Statutes, is created to read:

334.61 Traffic lane repurposing.—

(1) Whenever a governmental entity proposes any project that will repurpose one or more existing traffic lanes, the governmental entity shall include a traffic study to address any potential adverse impacts of the project, including, but not limited to, changes in traffic congestion and impacts on safety.

(2) If, following the study required by subsection (1), the governmental entity elects to continue with the design of the project, it must notify all affected property owners, impacted municipalities, and the counties in which the project is located at least 180 days before the design phase of the project is completed. The notice must provide a written explanation regarding the need for the project, information on how to review the traffic study required by subsection (1), and indicate that all affected parties will be given an opportunity to provide comments to the proposing entity regarding potential impacts of the change.

(3) The governmental entity shall hold at least one public meeting, with at least 30 days prior notice, before completing the design phase of the project in the jurisdiction where the project is located. At the public meeting, the governmental entity shall explain the purpose of the project and receive public input, including possible alternatives, to determine the

manner in which the project will affect the community.

(4) The governmental entity shall review all comments from the public meeting and take the comments and any alternatives presented during the meeting into consideration in the final design of the project.

Section 4. Paragraph (c) of subsection (3) of section 338.231, Florida Statutes, is amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.—The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

(3)

(c) Notwithstanding any other provision of law to the contrary, any prepaid toll account of any kind which has remained inactive for 10 ~~3~~ years is ~~shall be~~ presumed unclaimed and its disposition shall be handled by the Department of Financial Services in accordance with all applicable provisions of chapter 717 relating to the disposition of unclaimed property, and the prepaid toll account shall be closed by the department.

Section 5. Present subsection (4) of section 339.08, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

339.08 Use of moneys in State Transportation Trust Fund.—

(4) The department may not expend any state funds as described in s. 215.31 to support a project or program of any of the following entities which is found in violation of s. 381.00316:

(a) A public transit provider as defined in s. 341.031;

(b) An authority created pursuant to chapter 343, chapter 348, or chapter 349;

(c) A public-use airport as defined in s. 332.004; or

(d) A port listed in s. 311.09(1).

The department shall withhold state funds until the public transit provider, authority, public-use airport, or port is found in compliance with s. 381.00316.

Section 6. Section 339.0803, Florida Statutes, is amended to read:

339.0803 Allocation of increased revenues derived from amendments to s. 320.08 by ch. 2019-43.—

(1) Beginning in the 2021-2022 fiscal year and each fiscal year thereafter, funds that result from increased revenues to the State Transportation Trust Fund derived from the amendments to s. 320.08 made by chapter 2019-43, Laws of Florida, and deposited into the fund pursuant to s. 320.20(5)(a) must be used to fund arterial highway projects identified by the department in accordance with s. 339.65 and may be used for projects as specified in ss. 339.66 and 339.67. For purposes of the funding provided in this section, the department shall prioritize use of existing facilities or portions thereof when upgrading arterial highways to limited or controlled access facilities. However,

this section does not preclude use of the funding for projects that enhance the capacity of an arterial highway. The funds allocated as provided in this section shall be in addition to any other statutory funding allocations provided by law.

(2) Revenues deposited into the State Transportation Trust Fund pursuant to s. 320.20(5)(a) shall first be available for appropriation for payments under a service contract entered into with the Florida Department of Transportation Financing Corporation pursuant to s. 339.0809(4) to fund arterial highway projects. For the corporation's bonding purposes, two or more of such projects in the department's adopted work program may be treated as a single project.

Section 7. Subsection (13) of section 339.0809, Florida Statutes, is amended to read:

339.0809 Florida Department of Transportation Financing Corporation.—

(13) The department may enter into a service contract in conjunction with the issuance of debt obligations as provided in this section which provides for periodic payments for debt service or other amounts payable with respect to debt obligations, plus any administrative expenses of the Florida Department of Transportation Financing Corporation. Funds appropriated for payments under a service contract shall be available after funds pledged to payment on bonds, but before other statutorily required distributions.

Section 8. Subsection (8) is added to section 339.2818, Florida Statutes, to read:

339.2818 Small County Outreach Program.—

(8) Subject to specific appropriation, in addition to funds

appropriated for projects under this section, a local government either wholly or partially within the Everglades Agricultural Area as defined in s. 373.4592(15), the Peace River Basin, or the Suwannee River Basin may compete for additional funding using the criteria listed in paragraph (4)(c) at up to 100 percent of project costs on state or county roads used primarily as farm to market connections between rural agricultural areas and market distribution centers, excluding capacity improvement projects.

Section 9. Subsection (6) of section 341.051, Florida Statutes, is amended to read:

341.051 Administration and financing of public transit and intercity bus service programs and projects.—

(6)(a) ANNUAL APPROPRIATION.—Funds paid into the State Transportation Trust Fund pursuant to s. 201.15 for the New Starts Transit Program are hereby annually appropriated for expenditure to support the New Starts Transit Program.

(b) The unallocated New Starts Transit Program funds remaining as of July 1, 2024, must be reallocated for the purpose of the Strategic Intermodal System within the State Transportation Trust Fund. This paragraph expires June 30, 2026.

For purposes of this section, the term "net operating costs" means all operating costs of a project less any federal funds, fares, or other sources of income to the project.

Section 10. Subsection (4) is added to section 341.071, Florida Statutes, to read:

341.071 Transit productivity and performance measures; reports.—

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

(4)(a) As used in this subsection, the term:

1. "Administrative costs" includes, but is not limited to, salaried employees' compensation and benefits, small business outreach, professional service contracts not directly related to the operation and maintenance of a transit system, and other overhead expenses. This term does not include insurance costs.

2. "Public transit provider" means a public agency providing public transit service, including an authority created pursuant to part II of chapter 343 or chapter 349. This section does not apply to the Central Florida Commuter Rail Commission or the authority created pursuant to part II of chapter 343.

3. "Tier 1 provider" as defined in 49 C.F.R. part 625.

4. "Tier 2 provider" as defined in 49 C.F.R. part 625.

(b) Beginning November 1, 2024, and annually thereafter, each public transit provider shall, during a publicly-noticed meeting, certify that its budgeted and actual administrative costs are not greater than 20 percent above the annual state average of administrative costs for its tier. The provider shall also disclose all employees' compensation and benefits, ridership performance and metrics, and any gifts as defined in s. 112.312 accepted in exchange for contracts. This information must be posted on the provider's website.

(c) To support compliance with paragraph (b), the department shall, by tier, determine the percentage of each provider's total operating budget spent on administrative costs annually by March 31 to inform the provider's following fiscal year budget.

Section 11. Section 341.072, Florida Statutes, is created to read:

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341.072 Public transit provider marketing and advertising standards.—

(1) As a condition of receiving funds from the department, a public transit provider may not expend department funds for marketing or advertising activities, including any wrap, tinting, or paint on a bus, commercial motor vehicle, or motor vehicle, as those terms are defined in s. 316.003, except those that are limited to displaying a brand or logo of the public transit provider, the official seal of the jurisdictional governmental entity, or a state agency public service announcement.

(2) The department shall incorporate guidelines for the marketing or advertising activities allowed under subsection (1) in the public transportation grant agreement entered with each public transit provider.

(3) Any new wrap, tinting, paint, medium, or advertisement on the passenger windows of a vehicle used by a public transit provider may not be darker than the legally allowed window tinting as provided in s. 316.2954.

Section 12. Paragraph (a) of subsection (2) of section 341.822, Florida Statutes, is amended to read:

341.822 Powers and duties.—

(2)(a) In addition to the powers granted to the department, the enterprise has full authority to exercise all powers granted to it under this chapter. Powers shall include, but are not limited to, the ability to plan, construct, maintain, repair, and operate a high-speed rail system, ~~to acquire corridors, and~~ to coordinate the development and operation of publicly funded passenger rail systems in the state, and to preserve future rail

corridors and rights-of-way in coordination with the department's planning of the State Highway System.

Section 13. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/2024	SB 1226
Meeting Date	Bill Number or Topic
Senate Fiscal Policy	525088
Committee	Amendment Barcode (if applicable)

Name Katie Kelly Phone 8509332822

Address 106 E. College Avenue Suite 820 Email KKelly@mansonbolves.com
Street

Tallahassee Florida 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Greater Naples Fire and Rescue District

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1226
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jack Rogers, FDOT

Phone 850-414-4147

Address 605 Suwannee St.
Street

Email Jack.Rogers@DOT.State.FL.us

Tallahassee FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida department of Transportation

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1256
INTRODUCER:	Fiscal Policy Committee and Senator Martin
SUBJECT:	Voter Registration Applications
DATE:	February 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Biehl	Roberts	EE	**Favorable**
2.	Wells	Jerrett	ATD	**Favorable**
3.	Biehl	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1256 revises voter-registration duties of the Florida Department of Highway Safety and Motor Vehicles (DHSMV) by:

- Prohibiting the DHSMV from changing the party affiliation of an applicant who is updating his or her voter registration record unless the applicant designates and consents in writing to change his or her party affiliation.
- Requiring the DHSMV to, after verifying voter registration information and receiving the applicant's electronic signature, provide the applicant with a printed receipt that includes the submitted voter registration information and document any changes in party affiliation.
- Requiring the DHSMV to ensure that technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant.
- Requiring the DHSMV to be in full compliance with the bill's requirements within 3 months after the bill becomes law.

The bill may have an indeterminate fiscal impact. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

National Voter Registration Act of 1993

Congress passed the National Voter Registration Act (NVRA) in 1993[1] "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office," while also ensuring "that accurate and current voter registration rolls are maintained."[2] The NVRA requires, among other things, that each a state allow a driver's license application, or a renewal application, submitted to a state motor vehicle authority to also serve as a voter registration application with respect to elections for Federal office, unless the applicant fails to sign the voter registration application.[3] The voter registration application portion of a driver's license application is prohibited by the NVRA from requiring any information that duplicates information[4] required in the driver's license portion of the form.[5] The NVRA requires a voter registration application to include the following:

- A statement of each voter eligibility requirement (including citizenship).
- An attestation that the applicant meets each eligibility requirement.
- A signature of the applicant, under penalty of perjury.[6]

A voter registration application submitted to a state motor vehicle authority by a person who has already registered to vote is considered as updating the person's voter registration.[7]

Voter Registration and the Florida Department of Highway Safety and Motor Vehicles

The Florida Election Code[8] implements the NVRA by requiring the Department of Highway Safety and Motor Vehicles (DHSMV)[9] to provide an applicant "the opportunity to register to vote or to update a voter registration record" when he or she does any of the following actions:

- Applies for or renews a driver license.
- Applies for or renews an identification card (I.D. card).[10]
- Changes an address on an existing driver license or I.D. card.[11]

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[1] National Voter Registration Act of 1993, P.L. 103-31.
[2] 52 U.S.C. § 20501.
[3] 52 U.S.C. § 20504(a)(1). This provision of the NVRA has given the act the colloquial designation by which the bill is most commonly known: the "Motor-Voter" law.
[4] Additionally, the NVRA requires that a voter registration application issued in conjunction with an application for a driver's license only contain the minimum amount of information necessary to prevent duplicate voter registration and to enable state election officials to assess applicant eligibility and administer voter registration and other parts of the election process. 52 U.S.C. §20504(c)(2)(B).
[5] 52 U.S.C. §20504(c)(2)(A).
[6] 52 U.S.C. §20504(c)(2)(C).
[7] 52 U.S.C. §20504(a)(2).
[8] Chapters 97-106, F.S., are known as the Florida Election Code. Section 97.011, F.S.
[9] The DHSMV and certain county tax collectors have entered into statutorily authorized contracts, whereby tax collectors may deliver full or limited driver license services on behalf of the department. *See* s. 322.02, F.S.
[10] *See* s. 322.051, F.S.
[11] Section 97.057(1), F.S.

The DHSMV must notify each applicant, orally or in writing, that:[12]

- Information gathered for a driver license or I.D. card application, renewal, or change of address can be automatically transferred to a voter registration application.
- If he or she submits additional information and provides his or her signature, the voter registration application will be completed and thereafter sent to the proper election authority.
- Any information provided by him or her may also be used to update an existing voter registration record.
- If he or she declines to register to vote, such declination will remain confidential and may be used only for voter registration purposes.[13]
- The driver license office in which he or she applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.[14]

During the process of completing a driver license or I.D. card application, renewal, or change of address, each driver license examiner[15] must ask orally, or in writing if the person is hearing impaired, whether he or she wants to register to vote or update their voter registration record.[16] If the person responds in the affirmative, all applicable information used by the DHSMV to fill out the application, renewal, or change of address will be transferred to the voter registration application.[17] The voter registration application is required to be the same in content, format, and size as the uniform statewide voter registration application.[18] After the applicable information has been transferred, the person will be asked to provide any additional information necessary for the voter registration application to be complete.[19] The completed voter registration application must be presented to the person for him or her to review and verify.[20] Once the person reviews and verifies the information, he or she must provide an electronic signature affirming the accuracy of the information.[21] The DHSMV is required to electronically transmit completed voter registration applications within 24 hours to the statewide voter registration system,[22] which is administered by the Department of State (DOS).[23]

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[12] Section 97.057(2)(a), F.S.
[13] The NVRA requires that declinations to register to vote be kept confidential. 52 U.S.C. § 20504(c)(2)(D)(ii); *see also* s. 97.0585(1)(a), F.S., providing a public record exemption for such declinations.
[14] The NVRA requires that the office at which an applicant submits a voter registration application be kept confidential. 52 U.S.C. § 20504(c)(2)(D)(iii); *see also* s. 97.0585(1)(b), F.S., providing a public record exemption for information relating to the place where a person registered to vote or where he or she updated a registration record.
[15] The DHSMV is required to designate persons as "driver license examiners," who are tasked with conducting examinations, making factual reports of findings and recommendations as the DHSMV may require, and enforcing the following: all driver license laws; suspension, revocation, and cancellation orders; and laws relating to the registration of motor vehicles. Section 322.13, F.S.
[16] Section 97.057(2)(b), F.S.
[17] Section 97.057(2)(b)1., F.S.
[18] Section 97.057(3)(a), F.S.; *see* s. 97.052, F.S.
[19] However, the additional information may not duplicate information already obtained by the driver license examiner. Section 97.057(2)(b)1.b., F.S.
[20] Section 97.057(2)(b)1.c., F.S.
[21] *Id*.
[22] *See* ss. 97.012(11) and 98.035, F.S.
[23] If the voter registration application was completed via a physical paper document, the DHSMV must forward the document within five days to the supervisor of elections of the applicable county. Section 97.057(4), F.S.

If an applicant declines to register to vote, update their voter registration record, or change their address by either orally declining or by failing to sign the completed voter registration application, the DHSMV must note the declination and forward the information to the statewide voter registration system.[24]

A driver license examiner providing voter registration services is prohibited from:
- Seeking to influence an applicant's political preference or party registration;
- Displaying any political preference or party allegiance;
- Making any statement to an applicant or taking any action the purpose or effect of which is to discourage the person from registering to vote; or
- Disclosing any applicant's voter registration information except as needed for the administration of voter registration.[25]

The Florida Election Code provides an adjudicatory mechanism for a person who has suffered an alleged violation of the NVRA.[26] Such person may file with the DOS a written complaint that states the alleged violation.[27] Once received, the parties to the complaint must be given an opportunity to resolve the issue through an informal dispute resolution process.[28] If the informal dispute resolution process fails to resolve the issue, the complainant may bring an action in the respective circuit court for declaratory or injunctive relief if he or she gave proper written notice to the Secretary of State and an agreement was not reached or the alleged violation was not corrected within 90 days after the notice — or within 20 days of the notice if the alleged violation occurred within 120 days before the date of the election.[29]

Statewide Voter Registration Application

The DOS is required to create a uniform statewide voter registration application (VR application) by rule.[30] The VR application is required to elicit the following information:
- Name.
- Date of Birth.
- Address of legal residence.[31]
- Mailing address (if different from address of legal residence).
- E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

[24] Section 97.057(2)(b)2., F.S. This voter registration information transmittal is in addition to other types of information required to be submitted weekly by the DHSMV to the DOS. *See* s. 98.093(8), F.S.
[25] Section 97.057(6), F.S.
[26] Section 97.023, F.S.; *see also* r. 1S-2.036, F.A.C.
[27] Section 97.023(1)(a) and (b), F.S.
[28] Section 97.023(2), F.S. If the alleged violation occurred within 30 days before a state or federal election and the alleged violation will affect the registrant's right to vote in such election, the registrant may immediately bring an action in the circuit court in the county where the alleged violation occurred. Section 97.023(3), F.S.
[29] Section 97.023(3), F.S.
[30] Section 97.052(1), F.S.; *see* r. 1S-2.040, F.A.C., incorporating the uniform statewide voter registration application by reference. Uniform Statewide Voter Registration Application, DS-DE 39, *available at* https://www.flrules.org/gateway/readRefFile.asp?refId=3171&filename=Voter%20Reg%20App%20-%20DS-DE%2039%20-%20adoption.doc (last visited February 2, 2024).
[31] "Address of legal residence" means the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier. Section 97.021(3), F.S.

- County of legal residence.
- Race or ethnicity.
- State or country of birth.
- Sex.
- Party Affiliation.
- Whether the applicant needs assistance in voting.
- Name and address where last registered.
- Last four digits of the applicant's social security number.
- Florida driver license number or the identification number from a Florida I.D. card.
- An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida I.D. card, or a social security number.
- Telephone number (optional).
- Signature of the applicant under penalty for false swearing.[32]
- Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.
- Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?"
- Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored.
- Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored.[33]

The VR application must also contain the following constitutionally required oath:[34]

> I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida.[35]

Voter Registration and Party Affiliation

If a person fails to designate a party when he or she initially registers to vote, the supervisor of elections (supervisor) must designate that person as registered without party affiliation, also known as No Party Affiliated (NPA).[36] The supervisor must notify the voter of such designation and how he or she may change party affiliation.[37] Once registered, a voter's currently recorded political party affiliation may not be changed unless the voter indicates otherwise.[38] If a voter does wish to update the party affiliation on his or her voter registration record, he or she must

[32] *See* s. 104.011, F.S., for penalties for false swearing.
[33] Section 97.052(2), F.S.
[34] Section 97.052(3)(a), F.S.
[35] Article VI, s. 3, FLA. CONST.; *see also* s. 97.051, F.S.
[36] Section 97.053(5)(b), F.S.
[37] *Id*; See s. 97.1031(2), F.S., to see how a voter's party affiliation may be changed.
[38] Rule 1S-2.039(6)(b), F.A.C.

notify the supervisor by submitting a VR application indicating such.[39] After a voter's party affiliation is changed, the supervisor will issue that person a new voter information card.[40]

III. Effect of Proposed Changes:

The bill prohibits the party affiliation of an applicant who is updating his or her voter registration record from being changed unless the applicant designates and consents in writing to change his or her party affiliation.

The bill prohibits the DHSMV from:

- Using a voter registration application to change the party affiliation of an applicant, unless the applicant designates a change in party affiliation and provides a separate signature consenting to the party affiliation change.
- Updating a voter's registration record to change party affiliation, unless the individual designates the change and separately consent to such change in writing.

The bill requires the DHSMV to, after verifying the voter registration information and receiving the applicant's electronic signature, provide the applicant with a printed receipt that includes the submitted voter registration information and document any change in party affiliation.

The bill prohibits driver license examiners from making any change to applicant's party affiliation, unless the applicant provides a separate signature consenting to the party affiliation change or discussing an applicant's political preference or party registration.

The bill requires the DHSMV to ensure that information technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant. Lastly, the DHSMV must be in full compliance with the bill within three months after the bill becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities. In addition, bills that affect state or local elections are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

[39] Section 97.1031(2), F.S.

[40] Section 97.1031(3), F.S. Supervisors must provide registered voters with a voter information card, which constitutes notice of approval of registration. The card must contain the voter's registration number, date of registration, full name, party affiliation, date of birth, address of legal residence, precinct number, polling place address, name and contact information of the supervisor, and other information deemed necessary by the supervisor. Voters may request a replacement card in writing and supervisors must issue a new card if the voter's name, address of legal residence, polling place address, or party affiliation changes. Section 97.071, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on state expenditures as the DHSMV will have to make changes to the program used to register voters. The DHSMV has estimated that reprogramming the program could cost $9,675.[41] Additionally, the DHSMV might incur costs related to the production of the registration receipt required under the bill, as well as training staff on the new requirements in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.053 and 97.057.

[41] DHSMV Agency Bill Analysis of HB 135, on file with the Committee on Ethics and Elections. House Bill 135 is identical to this bill.

IX. Additional Information:

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

CS by Fiscal Policy on February 27, 2024:
The committee substitute:

- Removes from the underlying bill changes to the statewide voter registration system.
- Clarifies that the separate signature required in certain circumstances to change party affiliation may be electronic or hard copy.
- Removes from the underlying bill additional questions DHSMV employees must ask an applicant regarding his or her voter registration status and makes a conforming change.

B. Amendments:

None.

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

949112

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 128
and insert:
Section 1. Paragraph (b) of subsection (5) of section 97.053, Florida Statutes, is amended to read:
97.053 Acceptance of voter registration applications.—
(5)
(b) An applicant who fails to designate party affiliation must be registered without party affiliation, except that the

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party affiliation of an applicant who is updating a voter registration record may not be changed unless the applicant designates and consents in writing to a change in party affiliation. The supervisor must notify the voter by mail that the voter has been registered without party affiliation and that the voter may change party affiliation as provided in s. 97.1031.

Section 2. Subsections (2) and (6) of section 97.057, Florida Statutes, are amended, and subsection (14) is added to that section, to read:

97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Notify each individual, orally or in writing, that:

1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter registration application;

2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;

3. Information provided can also be used to update a voter registration record, except that party affiliation will not be changed unless the individual designates a change in party affiliation and separately consents to such change in writing;

4. All declinations will remain confidential and may be used only for voter registration purposes; and

5. The particular driver license office in which the person

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applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant wishes to register to vote or update a voter registration record during the completion of a driver license or identification card application, renewal, or change of address.

1. If the applicant chooses to register to vote or to update a voter registration record:

a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.

b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).

c. A voter registration application with all of the applicant’s voter registration information required to establish the applicant’s eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.

d. The voter registration application may not be used to change the party affiliation of the applicant unless the applicant designates a change in party affiliation and provides a separate signature consenting to the party affiliation change.

e. After verifying the voter registration information and

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providing his or her electronic signature, the applicant must be provided with a printed receipt that includes such information and documents any change in party affiliation.

2. If the applicant declines to register to vote, update the applicant's voter registration record, or change the applicant's address by either orally declining or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.

(6) A person providing voter registration services for a driver license office may not:

(a) Make any change to an applicant's party affiliation unless the applicant provides a separate signature

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

And the title is amended as follows:

Delete lines 3 - 12

and insert:

amending s. 97.053, F.S.; providing an exception to a requirement that certain voter registration applicants must be registered without party affiliation; amending s. 97.057, F.S.; requiring the Department of Highway Safety and Motor Vehicles to notify certain individuals of certain information;

By Senator Martin

33-01465-24 20241256__

A bill to be entitled

An act relating to voter registration applications; amending s. 97.052, F.S.; revising the information that the uniform statewide voter registration application must be designed to elicit; amending s. 97.053, F.S.; providing an exception to a requirement that certain voter registration applicants must be registered without party affiliation; amending s. 97.057, F.S.; requiring the Department of Highway Safety and Motor Vehicles to notify certain individuals of certain information; requiring a driver license examiner to make specified inquiries; prohibiting the department from changing the party affiliation of an applicant except in certain circumstances; requiring the department to provide an applicant with a certain receipt; revising the methods by which an applicant may decline to register to vote or update certain voter registration information; prohibiting a person providing voter registration services for a driver license office from taking certain actions; requiring the department to ensure that information technology processes and updates do not alter certain information without written consent; requiring the department to be in full compliance with the act within a certain period; providing an effective date.

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

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

33-01465-24 20241256__

Section 1. Paragraph (j) of subsection (2) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(j) Party affiliation or, for an applicant who is completing the application to update a voter registration record without changing his or her party affiliation, an indication that the applicant is choosing not to disclose his or her party affiliation.

Section 2. Paragraph (b) of subsection (5) of section 97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

(5)

(b) An applicant who fails to designate party affiliation must be registered without party affiliation, except that the party affiliation of an applicant who is updating a voter registration record may not be changed unless the applicant designates and consents in writing to a change in party affiliation. The supervisor must notify the voter by mail that the voter has been registered without party affiliation and that the voter may change party affiliation as provided in s. 97.1031.

Section 3. Subsection (2) and subsection (6) of section 97.057, Florida Statutes, are amended, and subsection (14) is added to that section, to read:

97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—

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

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Notify each individual, orally or in writing, that:

1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter registration application;

2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;

3. Information provided can also be used to update a voter registration record, except that party affiliation will not be changed unless the individual designates a change in party affiliation and separately consents to such change in writing;

4. All declinations will remain confidential and may be used only for voter registration purposes; and

5. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant is registered to vote, is not registered to vote, does not know if he or she is registered to vote, or does not wish to disclose whether he or she is registered to vote. If the applicant is not or does not know whether he or she is registered to vote, the driver license examiner shall inquire whether the applicant wishes to register to vote and, if the applicant is registered to vote, the driver license examiner

shall inquire whether the applicant wishes to ~~register to vote or~~ update a voter registration record during the completion of a driver license or identification card application, renewal, or change of address.

1. If the applicant chooses to register to vote or to update a voter registration record:

a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.

b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).

c. A voter registration application with all of the applicant's voter registration information required to establish the applicant's eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.

d. The voter registration application may not be used to change the party affiliation of the applicant unless the applicant designates a change in party affiliation and provides a separate original signature consenting to the party affiliation change.

e. After verifying the voter registration information and providing his or her electronic signature, the applicant must be provided with a printed receipt that includes such information and documents any change in party affiliation.

2. If the applicant declines to register to vote, update the applicant's voter registration record, or change the applicant's address by either orally declining or choosing not to disclose the applicant's voter registration status or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.

(6) A person providing voter registration services for a driver license office may not:

(a) Make any change to an applicant's party affiliation unless the applicant provides a separate original signature consenting to the party affiliation change or discuss or seek to influence an applicant's political preference or party registration;

(b) Display any political preference or party allegiance;

(c) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(d) Disclose any applicant's voter registration information except as needed for the administration of voter registration.

(14) The Department of Highway Safety and Motor Vehicles shall ensure that information technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant.

Section 4. The Department of Highway Safety and Motor Vehicles must be in full compliance with this act within 3 months after this act becomes a law.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

FISCAL
Committee

1256
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brason

Phone 561-815-2581

Address 12031 Coroco
Street

PBG FL 33418
City State Zip

Email jbrason@gmail.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ ~~I am~~ appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2.27.24
Meeting Date

Fiscal Policy
Committee

1256
Bill Number or Topic

949112
Amendment Barcode (if applicable)

Name Sarah Suskey

Phone 850.222.8400

Address 204 S. Monroe St
Street

TLH FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Secure Democracy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

7/27/2024
Meeting Date

Fiscal
Committee

SB 1256
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shirley Y Herman

Phone 561-596-7780

Address 7600 N. Flagler Apt 707
Street

West Palm Beach, FL 33407
City State Zip

Email shirleyherman@aol.com

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1264
INTRODUCER:	Appropriations Committee on Education; Education Pre-K -12 Committee; and Senator Collins and others
SUBJECT:	History of Communism
DATE:	February 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sabitsch	Bouck	ED	**Fav/CS**
2.	Gray	Elwell	AED	**Fav/CS**
3.	Sabitsch	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1264 requires instruction on the history of communism and makes provision for activities related to political and economic freedom. Additionally, the bill:

- Requires specified instruction on the history of communism beginning in the 2026-2027 school year that must be age and developmentally appropriate.
- Requires the Department of Education (DOE) to prepare and offer standards for the instruction on the history of communism.
- Removes the History of Communism Task Force established in the bill.
- Establishes the Institute for Freedom in the Americas at Miami Dade College and requires the institute to partner with the renamed Adam Smith Center for Economic Freedom to provide academic coursework and programs.
- Requires the Department of State and the DOE to recommend to the legislature on the creation of a museum of communist history.

The bill has an indeterminate fiscal impact on state expenditures. See Section V., Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Communism

Communism is a political and economic philosophy that aims to replace private property and a profit-based economy with public ownership and communal control of the major means of production and society's natural resources. Karl Marx and his associate, Friedrich Engels, blamed capitalism for the unfavorable and often-hazardous conditions of workers during the Industrial Revolution. They presented this critique of capitalism in 1848 in their widely circulated pamphlet, *Manifesto of the Communist Party*.[1]

One facet of the communist theory is that the proletariat (one of the lowest classes of society which lives entirely by the sale of its labor) would capture political power, abolish private property ownership, and take the private property of the bourgeoisie. Communism postulates that the taking and abolishment of private property by the proletariat would result in shared ownership of the means of production, ushering the world into a communal economic and societal utopia with equality for all.[2]

Before the full establishment of communism, however, the communist theory suggests that a transitional dictatorship of the proletariat may be necessary.[3]

Bolshevik Revolution

The Bolshevik Revolution, also known as the October Revolution, was the second of two revolutions in Russia in 1917. The Bolshevik Revolution was a revolution led by Vladimir Lenin in Russia against the ruling Russian Parliament that had replaced the ruling Tsar in the same year. The coup began in November of 1917, when the Bolsheviks led forces into Petrograd, then the capital of Russia. The Bolsheviks occupied government buildings and other locations across Petrograd. The coup led to the Russian Civil War and eventually the creation of the Soviet Union. The event inspired and ignited communist movements around the world. [4] However, instead of the expected dictatorship of the majority class of proletarians, the revolution resulted in a political party that claimed to represent proletarian interests.[5]

Required Instruction

The mission of Florida's K-20 education system is to allow its students to increase their proficiency by allowing them the opportunity to expand their knowledge and skills through rigorous and relevant learning opportunities.[6] Each district school board must provide

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[1] Encyclopedia Britannica, *Communism*, https://www.britannica.com/topic/communism (last visited Feb. 13, 2024).
[2] Engels, Friedrich, *Principles of Communism*, *No. 14* – (1847), *available at* https://www.marxists.org/archive/marx/works/1847/11/prin-com.htm (last visited Feb. 1, 2024).
[3] Encyclopedia Britannica, *Dictatorship of the Proletariat*, https://www.britannica.com/topic/dictatorship-of-the-proletariat (last visited Feb. 1, 2021).
[4] History, *The Russian Revolution*, *available at* https://www.history.com/topics/russia/russian-revolution (last visited Feb 13, 2024).
[5] Encyclopedia Britannica, *Dictatorship of the Proletariat*, https://www.britannica.com/topic/dictatorship-of-the-proletariat (last visited Feb 13, 2024).
[6] Section 1000.03(4), F.S.

appropriate instruction to ensure that students meet State Board of Education (SBE) adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.[7]

Instructional staff of public schools,[8] subject to the rules of the SBE and the district school board, must shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

- The history and content of the Declaration of Independence.
- The history, meaning, significance, and effect of the provisions of the Constitution of the United States.
- The arguments in support of adopting our republican form of government.
- Flag education, including proper flag display and flag salute.
- The elements of civil government.
- The history of the United States.
- The history of the Holocaust.
- The history of African Americans.
- The elementary principles of agriculture.
- The effects of alcoholic and intoxicating liquors and beverages and narcotics.
- Kindness to animals.
- The history of the state.
- The conservation of natural resources.
- Comprehensive health education.
- The study of Hispanic contributions to the United States.
- The study of women's contributions to the United States.
- The nature and importance of free enterprise to the United States economy.
- A character-development program in kindergarten through grade 12.
- The sacrifices that veterans and Medal of Honor recipients have made serving the country.[9]

Between 1961[10] and 1991,[11] Florida required the teaching of a 30-hour course of study for all students enrolled in public high schools entitled "Americanism vs. Communism." The instruction included the history, doctrines, objectives and techniques of communism with particular emphasis upon the dangers of communism, the ways to fight communism, the evils of communism, the fallacies of communism, and the false doctrines of communism.[12]

Beginning in the 2023-2024 school year, high school students enrolled in the United States Government class required to earn a standard high school diploma[13] must receive at least 45 minutes of instruction on "Victims of Communism Day" to include topics such as Mao Zedong and the Cultural Revolution, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban

[7] Section 1003.42(1), F.S.
[8] Instructional staff of charter schools are exempt from this section of law. Section 1002.33(16), F.S.
[9] Section 1003.42(2), F.S.
[10] Chapter 61-77, Laws of Fla.
[11] Chapter 91-105, s. 81, Laws of Fla.
[12] Chapter 61-77, Laws of Fla.
[13] Section 1003.4282(3), F.S.

Revolution, Vladimir Lenin and the Russian Revolution, Pol Pot and the Khmer Rouge, and Nicolás Maduro and the Chavismo movement, and how victims suffered under these regimes through poverty, starvation, migration, systemic lethal violence, and suppression of speech.[14]

The SBE is required to adopt and periodically review and revise the state academic standards.[15] Such standards must provide for the logical, sequential progression of core curricular content.[16] The SBE has approved three standards related to communism, in grades 9-12 social studies, and in grade 7 civics and government.[17]

Victims of Communism

In addition to violations of freedom of speech, freedom of religion, loss of property rights, and the criminalization of ordinary economic activity, communist regimes in the 20th century intentionally killed their own citizens.[18] One researcher compiled data from 1900 to 1987 related to state-sanctioned killings to provide a metric to consider when reflecting on the victims of communism and concluded that the Soviet Union was responsible for the deaths of over 61 million people. "Stalin himself is responsible for almost 43 million of these. Most of the deaths, around 39 million, are due to lethal forced labor in gulag and transit thereto." Communist China (1923-1949) was responsible for about 3.5 million deaths, and the People's Republic of China (PRC) (1949-present) was responsible for an additional 35.2 million deaths.[19]

In Cambodia, Pol Pot and the Khmer Rouge likely killed about 2 million Cambodians from April 1975 through December 1978, out of a population of around 7 million.[20]

In summary, from 1900 to 1987, communist dictators and regimes were responsible for the death of approximately 110 million individuals.[21] In 1993, Congress made similar findings and authorized a national memorial to honor victims of communism. In addition to death, Congress found that "the imperialist regimes of international communism have brutally suppressed the human rights, national independence, religious liberty, intellectual freedom, and cultured life of the peoples of over 40 captive nations." The purpose of the memorial is to permanently honor the sacrifices of these victims "so that never again will nations and peoples allow so evil a tyranny to terrorize the world."[22]

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[14] Section 683.334(3), F.S.
[15] Section 1001.03(1), F.S.
[16] Section 1003.41(1), F.S.
[17] The standards are: SS.912.W.6.3, Compare the philosophies of capitalism, socialism, and communism as described by Adam Smith, Robert Owen, and Karl Marx; SS.912.W.8.5, Identify the factors that led to the decline and fall of communism in the Soviet Union and Eastern Europe; and SS.7.CG.3.15, Analyze the advantages of capitalism and the free market in the United States over government-controlled economic systems (e.g., socialism and communism) in regard to economic freedom and raising the standard of living for citizens. CPALMS, *Browse and Search Standards*, "communism" https://www.cpalms.org/public/search/Standard (last visited Feb. 14, 2024).
[18] Ilya Somin, *Lessons from a Century of Communism*, Wash. Post, Nov. 7, 2017, *available at* https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/11/07/lessons-from-a-century-of-communism/ (last visited Feb 14 2024).
[19] Rummel, R.J., How Many Did Communist Regimes Murder? (Nov. 1993) available at: https://www.hawaii.edu/powerkills/COM.ART.HTM (last visited Feb 14, 2024).
[20] *Id.*
[21] *Id.*
[22] Pub. L. No. 103-199, s. 905 (Dec. 17, 1993).

Victims of Communism Day

The first national day recognizing victims of communism was November 7, 2017. Currently, eight states have officially recognized November 7 as "Victims of Communism Memorial Day," and seven other states currently have legislation filed to follow suit.[23] In 2022, Florida officially recognized Victims of Communism Day and to be publicly observed in honor of the 100 million people who have fallen victim to communist regimes.[24]

The Adam Smith Center for the Study of Economic Freedom

The Adam Smith Center for the Study of Economic Freedom (center) was created in 2020[25] at Florida International University to:

- Study the effect of government and free market economies on individual freedom and human prosperity.
- Conduct and promote research on the effect of political and economic systems on human prosperity.
- Plan and host research workshops and conferences to allow students, scholars, and guests to exchange in civil discussion of democracy and capitalism.
- Provide fellowship and mentoring opportunities to students engaged in scholarly studies of the effect of political and economic systems on human prosperity.[26]

In 2023,[27] the center was further authorized to:

- Hire necessary faculty and staff.
- Enroll students.
- Develop curriculum and offer new courses, including honors courses, certificates, and major and minor programs.
- Hold events, including fundraisers.
- Fulfill other actions approved by the president of the university.
- Generate resources based on student credit hour enrollment, in the same manner as any college within the institution.[28]

Florida College System Direct Support Organizations

A Florida College System (FCS) institution direct-support organization (DSO) is a Florida corporation not for profit, incorporated under the provisions of chapter 617 and approved by the Department of State. The DSOs are organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, an FCS institution. Each DSO must be reviewed and certified by the FCS institution's board of trustees to ensure

[23] Victims of Communism Memorial Foundation, *Victims of Communism Memorial Day*, *available at*: https://victimsofcommunism.org/programs/voc-day/ (last visited Feb. 14, 2024).
[24] Section 683.344, F.S.
[25] Chapter 2020-117, s. 8, Laws of Fla.
[26] Section 1004.64991, F.S.
[27] Chapter 2023-82, s. 8, Laws of Fla.
[28] Section 1004.64991(3), F.S.

that the DSO is being operated in a manner consistent with the goals of the college and in the best interest of the state.[29]

The chair of the FCS institution board of trustees must appoint a representative to the DSO board of directors and the executive committee. The president of the FCS institution for which the DSO is established, or the president's designee, must also serve on the board of directors and the executive committee of the DSO.[30]

III. Effect of Proposed Changes:

The bill modifies s. 1003.42, F.S., to add to required instruction in public schools the history of communism. The bill requires that the instruction be age and developmentally appropriate and include the following:

- The history of communism in the United States and domestic communist movements.
- Atrocities committed in foreign countries under the guidance of communism.
- Comparative discussion of political ideologies, such as communism and totalitarianism.
- The increasing threat of communism in the United States and to its allies.
- The economic, industrial, and political events that have preceded and anticipated communist revolutions.
- The communist policies of Cuba, and the spread of communist ideologies throughout Latin America.

The bill requires that the Department of Education (DOE) prepare and offer standards that for the required instruction and allows the DOE to seek input for any individual of communism or any state or nationally recognized organization dedicated to the victims of communism.

The bill requires the Department of State, in collaboration with the DOE, to consult with state and national stakeholders to provide a recommendation on the creation of a museum on the history of communism. This recommendation must be made to the legislature no later than December 1, 2024.

The bill creates s. 1004.89, F.S., to establish the Institute for Freedom in the Americas (institute) within Miami Dade College at the Freedom Tower to preserve the ideals of a free society and promote democracy. The institute is required to do the following:

- Partner with the Adam Smith Center for Economic Freedom to hold workshops, symposiums, and conferences that provide opportunities for leaders throughout the region to gain insight and ideas for promoting democracy.
- Enter into an agreement with the Adam Smith Center for Economic Freedom to provide participants with coursework and programs that advance democratic practices as well as economic and legal reforms.
- Provide educational and experiential opportunities for regional leaders committed to careers in democracy and governance.

[29] Section 1004.70(1), F.S.
[30] Section 1004.70(2), F.S.

The bill requires that Miami Dade College approve a direct support organization (DSO) to support the institute. The board of the DSO must be composed of five members. The Governor must appoint three members which must include a representative from Miami Dade College and a representative of the Adam Smith Center for Economic Freedom. The President of the Senate and the Speaker of the House of Representatives must each appoint one board member.

The bill modifies s. 1004.64991, F.S., to rename the Adam Smith Center for the Study of Economic Freedom to the Adam Smith Center for Economic Freedom and revises the goals of the center to include studying educational freedom and to plan and host symposiums to exchange in civil discussion of democracy and capitalism. The bill allows the center to offer degrees. Finally, the center is required to partner with the Institute for Freedom in the Americas to support the institute's mission, which includes promoting economic and individual freedoms as a means for advancing human progress with an emphasis on Latin America and the Caribbean.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an indeterminate, yet insignificant, fiscal impact to the DOE associated with preparing curriculum and standards for the required History of Communism Instruction.

There may be an indeterminate fiscal impact to create and meet the requirements of the Institute for Freedom in the Americas within Miami Dade College.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires Miami Dade College (MDC) to establish a direct-support organization (DSO) for the Institute for Freedom in the Americas, and establishes a five-member board for the DSO. The bill requires the Governor to appoint three members, including a MDC representative and a representative from the Adam Smith Center for Economic Freedom. The President of the Senate and the Speaker of the House of Representatives each appoint one member. However, s. 1004.70, F.S., requires that two members of a Florida College System institution DSO board must be the president of the college or the president's designee, and a member appointed by the chair of the college board of trustees. It is unclear how the appointments required in the bill will conform to statutory membership requirements.

VIII. Statutes Affected:

This bill substantially amends sections 1003.42 and 1004.64991 of the Florida Statutes.

This bill creates section 1004.89 of the Florida Statutes.

The bill creates an undesignated section of Florida Law.

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 Appropriations Committee on Education on February 20, 2024:
The committee substitute:

- Modifies provisions related to required instruction to include specific topics related to the history of communism. Such instruction must begin in the 2026-2027 school year, and must be both age and developmentally appropriate.
- Removes the requirement established in the bill, that school districts annually certify instruction on the history of communism to the Department of Education (DOE).
- Removes the History of Communism Task Force (task force) established in the bill, and shifts from the task force to the DOE the creation of standards for the history of

communism instruction, and to the Department of State and the DOE for recommendations regarding a museum of history on communism.
- Creates the Institute for Freedom within the Americas (institute) within Miami Dade College (MDC) and provides requirements for institute activities. The committee substitute requires MDC to establish a direct-support organization (DSO) to support the institute, and specifies membership on the DSO board.
- Renames the Adam Smith Center for the Study of Economic Freedom to the Adam Smith Center for Economic Freedom, revises the center's goals, and requires the center to partner with the institute.

CS by Education Pre-K - 12 Committee on January 30, 2024:
The committee substitute removes the "Third Reich of Nazi Germany" and adds "Marxism-Leninism and the Russian Revolution of 1917" as an example of a communist movement.

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 Appropriations Committee on Education; the Committee on Education Pre-K -12; and Senators Collins, Rodriguez, Harrell, and Avila

602-03508-24 20241264c2

A bill to be entitled

An act relating to the history of communism; amending s. 1003.42, F.S.; requiring instruction in public schools on the history of communism; providing requirements for the instruction; authorizing the department to prepare and offer standards for the instruction and to seek input from certain educational organizations; creating s. 1004.89, F.S.; creating the Institute for Freedom in the Americas at Miami Dade College; providing the purpose of the institute; requiring the institute to partner with the Adam Smith Center for Economic Freedom for specified purposes; requiring the institute to enter into an agreement with the Adam Smith Center for Economic Freedom for specified purposes; requiring Miami Dade College to approve a direct-support organization to support the institute; requiring the President of the Senate, the Speaker of the House of Representatives, and the Governor to appoint the board of the direct-support organization, subject to certain requirements; amending s. 1004.64991, F.S.; renaming the Adam Smith Center for the Study of Economic Freedom as the Adam Smith Center for Economic Freedom; revising the goals of the center; requiring the Department of State, in collaboration with the Department of Education, to consult with stakeholders to provide a recommendation to the Legislature by a specified date for the creation of a museum of the history of communism; providing for future expiration; providing an

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

602-03508-24 20241264c2

effective date.

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

Section 1. Paragraph (v) is added to subsection (2) of section 1003.42, Florida Statutes, to read:

1003.42 Required instruction.—

(2) Members of the instructional staff of the public schools, subject to the rules of the State Board of Education and the district school board, shall teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction, the following:

(v)1. Beginning in the 2026-2027 school year, the history of communism. Such instruction must be age appropriate and developmentally appropriate and include:

a. The history of communism in the United States and domestic communist movements, including their histories and tactics.

b. Atrocities committed in foreign countries under the guidance of communism.

c. Comparative discussion of political ideologies, such as communism and totalitarianism, which conflict with the principles of freedom and democracy essential to the founding principles of the United States.

d. The increasing threat of communism in the United States and to our allies through the 20th century, including the events of the Cultural Revolution in the People’s Republic of China and

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other mass killings from communist regimes.

e. The economic, industrial, and political events that have preceded and anticipated communist revolutions.

f. The communist policies of Cuba and the spread of communist ideologies throughout Latin America, including the roots of the Communist Party of Cuba and guerilla forces throughout Latin America.

2. The department shall prepare and offer standards for the instruction required by this paragraph and may seek input from any individual who was a victim of communism or any state or nationally recognized organization dedicated to the victims of communism.

The State Board of Education is encouraged to adopt standards and pursue assessment of the requirements of this subsection. Instructional programming that incorporates the values of the recipients of the Congressional Medal of Honor and that is offered as part of a social studies, English Language Arts, or other schoolwide character building and veteran awareness initiative meets the requirements of paragraph (u).

Section 2. Section 1004.89, Florida Statutes, is created to read:

1004.89 Institute for Freedom in the Americas.—

(1) The Institute for Freedom in the Americas is hereby created at Miami Dade College to preserve the ideals of a free society and promote democracy in the Americas. The institute shall be located at the Freedom Tower and shall:

(a) Partner with the Adam Smith Center for Economic Freedom to hold workshops, symposiums, and conferences that provide

networking opportunities for leaders throughout the region to gain new insights and ideas for promoting democracy, including knowledge of and insight into the intellectual, political, and economic freedoms that are foundational to a democratic society.

(b) Enter into an agreement with the Adam Smith Center for Economic Freedom to provide participants with academic coursework and programs that advance democratic practices and economic and legal reforms.

(c) Provide educational and experiential opportunities for regional leaders committed to careers in democracy and governance.

(2) Miami Dade College, in accordance with s. 1004.70, shall approve a direct-support organization to support the institute in its mission to develop partnerships throughout the Americas. The board of the direct-support organization shall be composed of five members, as follows: one member appointed by the President of the Senate; one member appointed by the Speaker of the House of Representatives; and three members appointed by the Governor, including a representative from Miami Dade College and a representative from the Adam Smith Center for Economic Freedom.

Section 3. Section 1004.64991, Florida Statutes, is amended to read:

1004.64991 The Adam Smith Center for ~~the Study of~~ Economic Freedom.—

(1) The Adam Smith Center for ~~the Study of~~ Economic Freedom at Florida International University is hereby created.

(2) The goals of the center are to:

(a) Study the effect of government and free market

economies on individual freedom, educational freedom, and human prosperity.

(b) Conduct and promote research on the effect of political and economic systems on human prosperity.

(c) Plan and host ~~research~~ workshops, symposiums, and conferences to allow students, scholars, and guests to exchange in civil discussion of democracy and capitalism.

(d) Provide fellowship and mentoring opportunities to students engaged in scholarly studies of the effect of political and economic systems on human prosperity.

(e) Partner with the Institute for Freedom in the Americas to support its mission, which includes promoting economic and individual freedoms as a means for advancing human progress with an emphasis on Latin American and the Caribbean.

(3) In order to carry out the purpose set forth in this section, the center ~~institute~~ is authorized to:

(a) Hire necessary faculty and staff pursuant to s. 1001.741;

(b) Enroll students;

(c) Develop curriculum and offer new courses, including honors courses, certificates, degrees, and major and minor programs;

(d) Hold events, including fundraisers;

(e) Fulfill other actions approved by the president of the university; and

(f) Generate resources based on student credit hour enrollment, in the same manner as any college within the institution.

Section 4. The Department of State, in collaboration with

the Department of Education, shall consult with state and national stakeholders to provide a recommendation to the Legislature, no later than December 1, 2024, on the creation of a museum of the history of communism. This section expires July 1, 2025.

Section 5. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1264
Bill Number or Topic

Amendment Barcode (if applicable)

Name Daniel Ellinger Ellinger

Phone 850-245-9645

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Street

Email daniel.ellinger1@fldoe.org

Tallahassee FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Department of Education

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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7/27/2024
Meeting Date

Fiscal
Committee

CS/CS/SB 1264
Bill Number or Topic

Amendment Barcode (if applicable)

Name Shirley Y Herman

Phone 561-596-7780

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City State Zip

Email Shirleyyherman@aol.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

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2/27/24
Meeting Date

1264
Bill Number or Topic

EISLA
Committee

Amendment Barcode (if applicable)

Name Jessica Brason Dem Women's Club Phone 5618152881

Address 12031 COROZO Email jbrason@gmail

Street

PBG FL 33418

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/20/24
Meeting Date

1264
Bill Number or Topic

Fiscal
Committee

Democratic Women's Club
Amendment Barcode (if applicable)

Name Dr Joan Waitkuwierkuwich

Phone 561 307 3418

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Street

Email dwcjoan@gmail.com

West Palm Beach FL 33407
City State Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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2/27/2024
Meeting Date

Fiscal Policy
Committee

1264
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Labriola

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Street

Email JohnLabriola@cfcflorida.net

Miami FL 33265
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Christian Family Coalition Florida

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1360
INTRODUCER:	Appropriations Committee on Agriculture, Environment, and General Government and Senator Gruters
SUBJECT:	Florida Red Tide Mitigation and Technology Development Initiative
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	**Favorable**
2.	Reagan	Betta	AEG	**Fav/CS**
3.	Rogers	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1360 amends s. 379.2273, F.S., to:

- Remove the expiration date for the Florida Red Tide Mitigation and Technology Development Initiative of June 30, 2025.
- Direct the initiative to develop field trials for red tide mitigation approaches and technologies.

When the initiative develops a field trial deployment technology, the initiative will submit a report with its findings to the Department of Environmental Protection (DEP) the Fish and Wildlife Conservation Commission (FWC), the Department of Agriculture and Consumer Services (DACS), and other state agencies with regulatory oversight of field trial deployment of the technologies and approaches in state waters. The DEP shall evaluate the technologies and approaches and identify all existing state permits the Mote Marine Laboratory (Mote) may use to deploy and test the technologies and approaches in state waters. The DEP shall submit its evaluation to the Mote within 60 days after receipt of the report. If the DEP determines existing state permits may not be used, the DEP shall amend its regulatory or permitting processes to ensure the timely deployment if any red tide or similar harmful algal bloom mitigation and control technologies and approaches recommended by the initiative. Upon successful testing of the technologies and approaches, the DEP shall expedite regulatory reviews for the recurring use of the technologies and approaches in state waters to control and mitigate the impacts of red tide or similar harmful algal blooms.

The DEP may incur an indeterminate cost if it is required to amend its regulatory or permitting processes. This can be absorbed within existing resources. See Section V., Fiscal Impact Statement.
The bill provides an effective date of July 1, 2024.

II. Present Situation:

Red Tide

Algae are a diverse group of plant-like organisms that produce oxygen and form the base of aquatic food webs, and they range from microscopic, single-celled organisms to large seaweeds.[1] When algae reproduce or accumulate far beyond their normal levels for a specific geographic area, it is known as a bloom.[2] When blooms occur they can have harmful effects such as smothering other marine life or blocking the sun, producing dangerous toxins, and depleting oxygen levels as the algae decays.[3] These events are known as harmful algal blooms.[4] In the waters around Florida, particularly in the Gulf of Mexico, such high concentrations of algae occur that the water turns red or brown.[5] These harmful algal blooms are known as "red tide," and have been observed for centuries.[6] In the Gulf of Mexico and around Florida, the species that causes most red tide is *Karenia brevis* (*K. brevis*).[7]

K. brevis is a single-celled algae that occurs in marine and estuarine waters in Florida.[8] *K. brevis* is always present in low concentrations in the Gulf of Mexico with no apparent adverse effects.[9] However, when it blooms, typically in the late summer or early fall, this species can cause large-scale harmful algal blooms.[10] *K. brevis* produces neurotoxins called brevetoxins that can sicken

[1] U.S. National Oceanic and Atmospheric Administration (NOAA), *What is a Harmful Algal Bloom?*, https://www.noaa.gov/what-is-harmful-algal-bloom (last visited Jan. 18, 2024); Florida Fish and Wildlife Conservation Commission (FWC), *What Is a Harmful Algal Bloom*, https://myfwc.com/research/redtide/general/harmful-algal-bloom/ (last visited Jan. 18, 2024). Microscopic algae produce around half of the oxygen we breathe.
[2] FWC, *What Is a Harmful Algal Bloom?*, https://myfwc.com/research/redtide/general/harmful-algal-bloom/ (last visited Jan. 18, 2024).
[3] *Id.*; NOAA, *What is a Harmful Algal Bloom?*, https://www.noaa.gov/what-is-harmful-algal-bloom (last visited Jan. 18, 2024).
[4] Gulf of Mexico Alliance, *A Primer on Gulf of Mexico Harmful Algal Blooms*, 2-5 (2013), *available at* https://myfwc.com/media/15902/habprimer.pdf (last visited Jan. 18, 2024). The term "harmful algal bloom" is sometimes abbreviated as "HAB."
[5] FWC, *Red Tide FAQ*, https://myfwc.com/research/redtide/faq/ (last visited Jan. 18, 2024).
[6] *Id.*
[7] *Id.*
[8] FWC, *Karenia Brevis: Fact Sheet*, https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf (last visited Jan. 18, 2024); Mote Marine Laboratory, *Phytoplankton Ecology*, https://mote.org/research/program/phytoplankton-ecology (last visited Jan. 10, 2024). *K. brevis* is a "phytoplankton" because it does photosynthesis like a plant.
[9] R. H. Pierce and M. S. Henry, *Harmful Algal Toxins of the Florida Red Tide (Karenia brevis): Natural Chemical Stressors In South Florida Coastal Ecosystems*, ECOTOXICOLOGY, vol. 17, 7 (2008): 623-631, 2 (2008), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2683401/pdf/nihms101414.pdf (last visited Jan. 18, 2024).
[10] FWC, *Karenia Brevis: Fact Sheet*, https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf (last visited Jan. 18, 2024); FWC, *Red Tide Current Status*, https://myfwc.com/research/redtide/statewide/ (last visited Jan. 18, 2024). FWC reports the current status of red tide using the concentration of *K. brevis* cells per liter of water.

or kill fish, seabirds, turtles, and marine mammals.[11] Wave action can break open *K. brevis* cells and release the brevetoxins into the air. With winds blowing onshore, this can lead to respiratory irritation in humans and potentially serious illness for people with severe or chronic respiratory conditions.[12] The red tide toxins can also accumulate in animals such as oysters and clams, which can lead to Neurotoxic Shellfish Poisoning in people who consume contaminated shellfish.[13] Though this is less common, blooms of *K. brevis* can also contribute to fish kills by depleting the water of dissolved oxygen.[14]

K. brevis cannot tolerate low-salinity waters for very long, so while red tide is found in bays and estuaries, it is not found in freshwater systems such as lakes or rivers.[15] The algae causing red tide is different from the cyanobacteria (often called "blue-green algae") found in freshwater systems such as Lake Okeechobee.[16] Cyanobacteria is found in lakes, rivers, and estuaries, and it too is toxic and harmful.[17]

There is no demonstrated direct link between nutrient pollution and *K. brevis* red tide formation or frequency, and red tide has been observed since before Florida's coastlines were heavily developed.[18] However, once red tides are transported to shore, they are capable of using human-caused nutrient pollution for their growth.[19] Currently, there is no practical and acceptable way to control or kill red tide blooms.[20] Harmful algal blooms can result in significant costs associated with public health, commercial fishery reduction, decreases in recreation and tourism, and management and monitoring.[21]

Fish and Wildlife Research Institute

The FWC derives its authority from the State Constitution and chapter 379 of the Florida Statutes.[22] The FWC is authorized to exercise regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life, and in these areas the FWC's staff is authorized to conduct management, research, and enforcement.[23] The Fish and Wildlife Research Institute (Institute) is the principal unit for research services within the FWC.[24]

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[11] FWC, *Karenia Brevis: Fact Sheet*, https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf (last visited Jan. 18, 2024).
[12] Mote Marine Laboratory, *Florida Red Tide FAQ's*, https://mote.org/news/florida-red-tide (last visited Jan. 18, 2024).
[13] FWC, *Karenia Brevis: Fact Sheet*, https://myfwc.com/media/12422/karenia-brevis-factsheet.pdf (last visited Jan. 18, 2024).
[14] *Id.*
[15] FWC, *Red Tide FAQ*, https://myfwc.com/research/redtide/faq/ (last visited Jan. 18, 2024).
[16] *Id.*
[17] FWC, *Cyanobacteria in Florida's Waters*, https://myfwc.com/research/redtide/general/cyanobacteria/ (last visited Jan. 18, 2024); U.S. EPA, *Harmful Algal Blooms & Cyanobacteria Research*, https://www.epa.gov/water-research/harmful-algal-blooms-cyanobacteria-research (last visited Jan. 18, 2024). Although they are often called "blue-green algae" and exhibit characteristics of algae, cyanobacteria are classified as bacteria.
[18] Mote Marine Laboratory, *Florida Red Tide FAQ's*, https://mote.org/news/florida-red-tide (last visited Jan. 18, 2024).
[19] *Id.*
[20] FWC, *Red Tide FAQ*, https://myfwc.com/research/redtide/faq/ (last visited Jan. 18, 2024).
[21] *Id.*
[22] FLA. CONST. art. IV, s. 9., s. 9; *see* chapter 379, F.S.; *see also* s. 20.331, F.S.
[23] FLA. CONST. art. IV, s. 9.
[24] Section 20.331(4)(b), F.S.; FWC, *Fish and Wildlife Research Institute*, https://myfwc.com/about/inside-fwc/fwri/ (last visited Jan. 18, 2024).

The FWC assigns to the Institute all of the following responsibilities and functions:

- Serve as the primary source of research and technical information and expertise on the status of marine life, freshwater aquatic life, and wild animal life resources in this state.
- Monitor the status and health of marine life, freshwater aquatic life, and wild animal life species and their habitat.
- Develop restoration and management techniques for habitat and enhancement of plant and animal populations.
- Respond to and provide critical technical support for catastrophes including oil spills, ship groundings, major species die-offs, hazardous spills, and natural disasters.
- Identify and monitor harmful algal blooms including red tides, evaluate their impacts, and provide technical support concerning state and local public health concerns.
- Provide state and local governments with technical information and research results concerning fish and wild animal life.[25]

The Harmful Algal Bloom Task Force, whose members are appointed by the Institute, was created for the purpose of determining research, monitoring, control, and mitigation strategies for red tide and other harmful algal blooms in Florida waters.[26] The task force develops priorities and strategies for mitigation and control of harmful algal blooms and is tasked with making recommendations to the Institute regarding harmful algal blooms.[27] The Legislature also requires the Institute to implement a program designed to improve understanding and allow for early detection of harmful algal blooms, including red tide, to facilitate accurate predictions and successful efforts to control and mitigate the effects of harmful algal blooms.[28]

The Institute provides many services and resources pertaining to red tide. It regularly publishes detailed information on the status of red tide in the state.[29] The Institute's teams of experts conduct cutting-edge ecological research and analysis on the organisms in Florida's waters, advancing the collective understanding of red tide and its impacts on the state.[30] The FWC scientists combine field sampling with tools maintained by state and federal partners to track red tide and its effects.[31] Through its webpages on the FWC's website, the Institute provides comprehensive information and resources to the public relating to red tide.[32] This includes resources for learning what causes red tide, tools for tracking red tide, and information for reporting on red tide and its effects.[33]

[25] Section 20.331(7)(a), F.S.
[26] Section 379.2271(1), F.S.
[27] Section 379.2271, F.S.
[28] Section 379.2272, (1)(a), F.S.
[29] FWC, *Red Tide Current Status*, https://myfwc.com/research/redtide/statewide/ (last visited Jan. 18, 2024).
[30] FWC, *Labs and People: About*, https://myfwc.com/research/redtide/labs-people/about/ (last visited Jan. 18, 2024).
[31] FWC, *Tools for Tracking Red Tides*, https://myfwc.com/research/redtide/tools/ (last visited Jan. 18, 2024).
[32] FWC, *Research: Red Tide*, https://myfwc.com/research/redtide/ (last visited Jan. 18, 2024).
[33] FWC, *Red Tide-Related Hotlines and Information Sources*, https://myfwc.com/research/redtide/contact/ (last visited Jan. 17, 2024).

Mote Marine Laboratory

The Mote Marine Laboratory (Mote) is a Florida nonprofit organization that was founded in 1955.[34] The Mote's focus is the advancement of marine and environmental sciences through scientific research, education and public outreach, leading to new discoveries, revitalization and sustainability of the oceans and greater public understanding of marine resources.[35]

The nonprofit organization is funded through federal, state, and local grants and through individual donors and foundations.[36] The FWC is authorized to expend certain money through grants and contracts to fund research with the Mote.[37] The proceeds of the annual use fee for the "Protect Our Reefs" license plates are distributed to the Mote.[38]

Since early on in its development, the Mote has been conducting research on red tide.[39] Its experts are conducting research on red tide with the goal of understanding how the blooms form, how they dissipate into the environment, and what effects it has on humans and marine animals.[40] The Mote monitors red tide by taking samples, including with the use of technology such as detectors specially developed by the laboratory and autonomous underwater vehicles, providing continuous data that is communicated back to the laboratory for analysis.[41] The laboratory's Beach Conditions Report provides detailed information on the conditions at a number of Florida beaches.[42] Several of the laboratory's research programs cover areas of science related to red tide, such as the effects of toxins on aquatic organisms, the environmental health aspects of airborne toxins in coastal areas, and phytoplankton ecology.[43]

Florida Red Tide Mitigation and Technology Development Initiative

The Florida Red Tide Mitigation & Technology Development Initiative is a partnership between the Mote and the Institute codified in s. 379.2273, F.S., that establishes an independent and coordinated effort among public and private research entities to develop prevention, control and mitigation technologies and approaches that will decrease the impacts of Florida red tide on the environment, economy and quality of life in Florida. The state has appropriated $3 million annually for Mote to secure additional private and federal funding in order to:

- Bring together the best and brightest scientists from Florida and around the world;

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[34] Mote Marine Laboratory, *Beyond 2020 Vision and Strategic Plan*, 26, *available at* https://mote.org/media/uploads/files/StratPlan3.0_ffw.pdf (last visited Jan. 10, 2024).
[35] Mote Marine Laboratory, *Beyond 2020 Vision and Strategic Plan*, 15, *available at* https://mote.org/media/uploads/files/StratPlan3.0_ffw.pdf (last visited Jan. 10, 2024).
[36] Mote Marine Laboratory, *Mote Marine Laboratory and Aquarium*, https://mote.org/locations/details/mote-marine-laboratory-aquarium (last visited Jan. 18, 2024).
[37] Section 379.2202, F.S.; Section 379.2201(1)(c), F.S. The section authorizes money from saltwater license and permit fees to be used for marine research and management; *see* s. 379.354, F.S.
[38] Section 320.08058(38), F.S.
[39] Kumar Mahadevan, Mote Marine Laboratory, *Exploring the Secrets of the Sea Since 1955*, 3 (Nov. 19, 2010) *available at* https://mote.org/media/uploads/files/MoteMarineLaboratory-history.pdf (last visited Jan. 18, 2024).
[40] Mote Marine Laboratory, *Red Tide Research*, https://mote.org/news/red-tide-research (last visited Jan. 18, 2024).
[41] *Id.*
[42] Mote Marine Laboratory, Sarasota Operations Coastal Oceans Observation Lab, *Beach Conditions Reporting System*, https://visitbeaches.org/# (last visited Jan. 18, 2024).
[43] Mote Marine Laboratory, *Red Tide Research*, https://mote.org/news/red-tide-research (last visited Jan. 18, 2024).

- Utilize innovative approaches and technologies to determine the most effective and ecologically sound methods for mitigating adverse impacts from red tide;
- Test technologies with combinations of lab-based, large-scale mesocosm and pilot-scale field studies ultimately leading to permitting for large-scale field testing and application;
- Develop novel detection systems to support public red tide forecasting, emergency response, and implementation of control strategies;
- Enhance public health protection with expansion of the Beach Conditions Reporting System (visitbeaches.org), local community outreach and engagement; and
- Develop new technologies for smartphone apps to engage citizen science information collaborations and commercial fisherman reporting of red tide toxin concentrations.[44]

The initiative is required to submit an annual report that contains an overview of its accomplishments to date and priorities for subsequent years to the Governor and Legislature.[45] According to its January 2023 report, to date, the Mote has examined over 200 chemicals and compounds and more than 30 projects have been completed or are underway.[46] Most of these projects focused on natural, manmade and technological mitigation techniques. A few projects are also dedicated to the development of red tide public communication and monitoring technologies specifically aimed at decreasing impacts of red tide. Such projects include updating the Programmable Hyperspectral Seawater Scanner, in-situ biosensor for detecting brevetoxins for use by shellfish farmers, cost/benefit analysis of removing red tide impacted dead fish and utilization as a fertilizer, unmanned aerial system for near-shore red tide reporting, updating the Beach Condition Reporting System (now with more than 50 reporting locations), and developing citizen science tools for red tide detection using a smartphone.[47]

From the hundreds of mitigation tools and technologies that the initiative examined over the past three years and the more than 30 projects completed or underway, below are the most promising mitigation tools and technologies at reducing *K. brevis* cells and toxins:

- Six algicidal compounds from natural macroalgae;
- Ozonation, cavitation, oxidation water treatment process;
- Controlled release oxidant pellets;
- Nanotechnology enabled products;
- UV-C radiation from LEDs;
- Quaternary Ammonium Compounds;
- Clay or flocculant combined with an algaecide compound;
- Existing products with similar proven/approved uses such as Microbe-lift, Xtreme, and De-Oil-It.

[44] Florida Red Tide Mitigation and Technology Development Initiative, *Accomplishments and priorities report*, 2 (Jan. 2023) *available at* https://mote.org/media/uploads/files/RedTideInitiative_AccomplishmentsPrioritesReport2022_ffw.pdf.
[45] Section 379.2273, F.S.
[46] Florida Red Tide Mitigation and Technology Development Initiative, *Accomplishments and priorities report*, 5 (Jan. 2023) *available at* https://mote.org/media/uploads/files/RedTideInitiative_AccomplishmentsPrioritesReport2022_ffw.pdf.
[47] *Id*.

The initiative's next steps include mesocosms/raceways,[48] regulatory approvals and field testing, public engagement, and commercialization. As part of commercialization of its approaches to red tide mitigation, the Mote is coordinating with state and federal agencies to examine existing water and pesticide regulatory and licensing frameworks for field red tide mitigation testing and implementation during future bloom events. The Mote has also hosted workshops addressing project status, regulatory requirements, deployment technologies, scalability, intellectual property rights, and how to effectively bring these science-based tools and technologies to the marketplace.[49]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 379.2273, F.S., to:

- Remove the expiration date for the Florida Red Tide Mitigation and Technology Development Initiative of June 30, 2025.
- Direct the initiative to develop field trials for red tide mitigation approaches and technologies.

Specifically, the bill states that upon successful completion of science-based laboratory testing of prevention, control, and mitigation technologies and approaches, the initiative shall develop recommendations for field trial deployment technologies of the technologies and approaches in state waters. The initiative shall submit a report with its findings and recommendations to the DEP, the FWC, the DACS and other state agencies with regulatory oversight of field trial deployment of the technologies and approaches in state waters. The DEP shall evaluate the technologies and approaches and identify all existing state permits the Mote may use to deploy and test the technologies and approaches in state waters. The DEP shall submit its evaluation to the Mote within 60 days after receipt of the report. If the DEP determines existing state permits may not be used, the DEP shall amend its regulatory or permitting processes to ensure the timely deployment if any red tide or similar harmful algal bloom mitigation and control technologies and approaches recommended by the initiative. Upon successful testing of the technologies and approaches, the DEP shall expedite regulatory reviews for the recurring use of the technologies and approaches in state waters to control and mitigate the impacts of red tide or similar harmful algal blooms.

Section 2 of the bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[48] A mesocosm is any outdoor experimental system that examines the natural environment under controlled conditions. A raceway, also known as a flow-through system, is an artificial channel used in aquaculture to culture aquatic organisms.
[49] Florida Red Tide Mitigation and Technology Development Initiative, *Accomplishments and priorities report*, 6 (Jan. 2023) *available at* https://mote.org/media/uploads/files/RedTideInitiative_AccomplishmentsPrioritesReport2022_ffw.pdf.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

The Florida Red Tide Mitigation and Technology Development Initiative currently has an annual appropriation of $3 million in the base budget. The DEP may incur an indeterminate cost if it is required to amend its regulatory or permitting processes. This can be absorbed within existing resources.

VI. Technical Deficiencies:

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 379.2273 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations Committee on Agriculture, Environment, and General Government on February 20, 2024:
The committee substitute

- Adds agencies that the initiative report is sent to.
- Requires the DEP to submit an evaluation of the report within 60 days to Mote Marine Laboratory.
- Provides that if the DEP determines existing state permits may not be used, the DEP shall amend its regulatory or permitting processes to ensure the timely deployment of any red tide or similar harmful algal bloom mitigation and control technologies and approaches recommended by the initiative.
- Provides that upon successful testing of technologies and approaches, the DEP shall expedite regulatory reviews for the recurring use of the technologies and approaches in state waters to control and mitigate the impacts of red tide or similar harmful algal blooms.
- Removes the provisions that within 30 days after receipt of the report, the DEP must review the technology and approve, approve with conditions, or deny with explanation the use of the technology in state waters for certain red tide bloom concentrations. If the DEP does not act in 30 days, the technology is deemed approved.
- Removes the appropriation of $2 million for Fiscal Years 2025-2026 and 2026-2027 from the General Revenue Fund to the FWC for the purposes of the Florida Red Tide Mitigation and Technology Development Initiative.
- Removes the expiration date for the Florida Red Tide Mitigation and Technology Development Initiative of June 30, 2025.

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 Appropriations Committee on Agriculture, Environment, and General Government; and Senator Gruters

601-03515-24 20241360c1

A bill to be entitled

An act relating to the Florida Red Tide Mitigation and Technology Development Initiative; amending s. 379.2273, F.S.; requiring the initiative to develop recommendations for deployment of certain technologies and approaches and submit a report to the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, and certain state agencies; requiring the department to submit an evaluation regarding the technologies and approaches to Mote Marine Laboratory within a specified time period and amend regulatory or permitting processes and expedite regulatory reviews under certain circumstances; removing the expiration date of the initiative; providing an effective date.

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

Section 1. Present paragraphs (c) and (d) of subsection (2) of section 379.2273, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, a new paragraph (c) is added to that subsection, and subsection (4) of that section is amended, to read:

379.2273 Florida Red Tide Mitigation and Technology Development Initiative; Initiative Technology Advisory Council.—

(2) The Florida Red Tide Mitigation and Technology Development Initiative is established as a partnership between the Fish and Wildlife Research Institute within the commission and Mote Marine Laboratory.

(c) Upon successful completion of science-based laboratory testing of prevention, control, and mitigation technologies and approaches, the initiative shall develop recommendations for field trial deployment of the technologies and approaches in state waters. The initiative shall submit a report on its findings and recommendations to the department, the commission, the Department of Agriculture and Consumer Services, and other state agencies with regulatory oversight of field trial deployment of the technologies and approaches in state waters. The department shall evaluate the technologies and approaches and identify all existing state permits Mote Marine Laboratory may use to deploy and test the technologies and approaches in state waters. The department shall submit its evaluation to Mote Marine Laboratory within 60 days after receipt of the report. If the department determines existing state permits may not be used, the department shall amend its regulatory or permitting processes to ensure the timely deployment of any red tide or similar harmful algal bloom mitigation and control technologies and approaches recommended by the initiative. Upon successful testing of the technologies and approaches, the department shall expedite regulatory reviews for the recurring use of the technologies and approaches in state waters to control and mitigate the impacts of red tide or similar harmful algal blooms.

~~(4) This section expires June 30, 2025.~~

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1360
Bill Number or Topic

Amendment Barcode (if applicable)

Name David Shepp

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Address 123 S. Adams Street
Street

Email shepp@thesoutherngroup.com

Tallahassee FL 32302
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Mote Marine Laboratory

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1380
INTRODUCER:	Appropriations Committee on Health and Human Services; Transportation Committee; and Senator Hutson
SUBJECT:	Transportation Services for Persons with Disabilities and the Transportation Disadvantaged
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Vickers	TR	**Fav/CS**
2.	Howard	McKnight	AHS	**Fav/CS**
3.	Johnson	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1380 relates to special transportation services for persons with disabilities. The bill:

- Defines the terms "immediate family member," "request for service," and "transportation service provider."
- Revises the membership of the Commission for Transportation Disadvantaged (commission).
- Removes a fingerprinting and background check requirement for commission members.
- Requires the commission to:
  - Provide best practices, latest technological innovations and preferential vendors list to county transportation disadvantaged program managers.
  - Annually review and conduct a performance audit of each coordinator contract and transportation operator contract.
  - Establish a system for resolving complaints.
- Revises commission reporting requirements to include information on complaints, cost of service, contracts, funds provided by the commission, and the results of performance audits.
- Requires paratransit drivers attend training programs provided through the Agency for Persons with Disabilities (APD).
- Requires providers to provide training to each paratransit driver that meets the APD requirements for the professional development of staff providing direct services.
- Requires providers to offer specific technology-based ride booking and vehicle tracking services that must be in accessible formats and regularly maintained and upgraded.

- Requires providers to offer both pre-booking and on-demand service to paratransit service users.
- Requires a provider and its contracted local government entity to establish reasonable time periods between a trip request and arrival, best practices for limiting travel times, and transparency regarding the quality of services, including timelines and handling of complaints.
- Requires the APD, in collaboration with the FDOT, to establish requirements for the investigation of adverse incidents reported to the provider and/or local government, including periodic review of ongoing investigations and documentation of final outcomes.
- Requires the APD and the FDOT to investigate an adverse incident within 48 hours after receipt of the report.
- Removes the exemption from competitive bidding requirements for local government entities to enter into contracts with special transportation providers serving persons with disabilities.

The bill may have a significant negative fiscal impact to private transportation providers, local governments, the APD and the commission. *See* Section V., Fiscal Impact Statement.

The bill takes effect on July 1, 2024.

II. Present Situation:

There are numerous federal, state and local programs supporting the delivery of transportation services for persons with disabilities, often referred to as "paratransit,"[1] that are usually scheduled between the individual and transportation provider and provided on a door-to-door or curb-to-curb basis.[2]

The Florida Commission for the Transportation Disadvantaged (commission)[3] operates a statewide transportation disadvantaged program supporting the coordination of transportation services for persons with disabilities as well as older adults, individuals with low-income, and at-risk children who require access to critical activities within their communities.[4]

The federal Americans with Disabilities Act affords complementary paratransit services for individuals with disabilities who are unable to access a fixed bus route, if available, within their community.[5]

[1] Section 427.011(9), F.S., defines the term "paratransit" to mean those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.
[2] Commission for Transportation Disadvantaged (Commission), *Agency Analysis of 2024 Senate Bill 1380*, p. 1. (On file with the Senate Committee on Transportation).
[3] The Commission for Transportation Disadvantaged is administratively housed in, but independent from, the Florida Department of Transportation.
[4] *Supra* note 2.
[5] Commission for Transportation Disadvantaged (Commission), *Agency Analysis of 2024 Senate Bill 1380*, p. 1. (On file with the Senate Committee on Transportation).

The Agency for Persons with Disabilities (APD) operates a Medicaid waiver program that provides home and community-based services, including transportation, to eligible individuals with intellectual and developmental disabilities.[6]

Medicaid Non-Emergency Transportation services are paratransit services funded under the Agency for Health Care Administration's Managed Medical Assistance program to allow Medicaid recipients to access health care appointments.[7]

Federal Transit Administration grant programs provides funding to states and transit systems to support the purchase of capital equipment and other operating expenses related to serving persons with disabilities and other groups.[8]

Each of the above programs has its own eligibility criteria and regulatory standards for transportation providers. For example, the Florida Department of Transportation (FDOT) is responsible for establishing and regulating safety standards pertaining to public transportation funded by the FDOT and Federal Transit Administration programs.[9] Additionally, each program has a different process in place for resolving complaints and grievances related to eligibility and provision of services.[10]

Overview of the Transportation Disadvantaged Program

Florida's Transportation Disadvantaged (TD) Program[11] supports the coordination of transportation services for individuals who are "transportation disadvantaged." The Legislature specifically defined the TD population as "persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities."[12] The purpose of coordination is to ensure that transportation services are provided to the TD eligible customers "in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services."[13][14]

The commission administers the Transportation Disadvantaged Trust Fund,[15] where a majority of its funds are used to purchase paratransit services "not sponsored" or subsidized by any other agency or funding source.[16] The TD Program consists of centralized (statewide) policy development and decentralized local implementation.[17]

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[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *See* s. 341.061, F.S., and Chapter 14-90, Florida Administrative Code.
[10] *Supra* note 5.
[11] Sections 427.011-427.017, F.S.
[12] Section 427.011(1), F.S.
[13] Section 427.011(11), F.S.
[14] *Supra* note 5.

[15] The Transportation Disadvantaged Trust Fund is established in s. 427.0159, F.S.
[16] Sections 427.011(12) and 427.0159(3), F.S.
[17] Commission for Transportation Disadvantaged (Commission), *Agency Analysis of 2024 Senate Bill 1380*, p. 1. (On file with the Senate Committee on Transportation).

The community transportation coordinator[18] is responsible for arranging transportation services to the TD population within a designated county or multi-county service area. The community transportation coordinator may be a local government, such as a board of county commissioners, transit agency, not-for-profit organization, or for-profit company designated by the commission.

The official planning agency[19] is responsible for planning for the needs of and services for the TD population within its designated service area, including recommending an entity to serve as the community transportation coordinator. The planning agency may be a metropolitan planning organization, regional planning council, or similar entity designated by the commission.

The local coordinating board[20] is an advisory board responsible for assisting the community transportation coordinator in meeting the TD needs of its designated service area. Local coordinating board members are appointed by the planning agency and represent riders and their advocates, human service agencies, and other stakeholders of the TD Program.[21]

Commission for Transportation Disadvantaged

The commission consists of seven members appointed by the Governor based on the following qualifications:[22]

- Five members must have significant experience in the operation of a business, and it is the intent of the Legislature that, when making an appointment, the Governor select persons who reflect the broad diversity of the state's business community, as well as the state's racial, ethnic, geographical, and gender diversity.
- Two members must have a disability and use the transportation disadvantaged system.
- Each member must be a Florida resident and a registered voter.
- At least one member must be at least 65 years of age.
- A member may not, within the five years immediately before his or her appointment, or during his or her term on the commission, have or have had a financial relationship with, or represent or have represented as a lobbyist, for the following: a transportation operator; a community transportation coordinator; a metropolitan planning organization (MPO);[23] a

[18] Section 427.011(5), F.S., defines the term "community transportation coordinator" to mean a transportation entity recommended by a metropolitan planning organization, or by the appropriate designated official planning agency as provided for in ss. 427.011-427.017, F.S., in an area outside the purview of a metropolitan planning organization, to ensure that coordinated transportation services are provided to the transportation disadvantaged population in a designated service area.
[19] Section 427.015, F.S.
[20] Section 427.011(7), F.S., defines the term "coordinating board" to mean an advisory entity in each designated service area composed of representatives appointed by the metropolitan planning organization or designated official planning agency, to provide assistance to the community transportation coordinator relative to the coordination of transportation services.
[21] *Supra* note 17.
[22] Section 427.012(1), F.S.
[23] Section 427.011(2), F.S., defines the term "metropolitan planning organization" as the organization responsible for carrying out transportation planning and programming in accordance with the provisions of 23 U.S.C. § 134, as provided in 23 U.S.C. § 104(f)(3).

designated official planning agency; a purchasing agency;[24] a local coordinating board; a broker of transportation; or a provider of transportation services.
- Each candidate for appointment to the Commission must, before accepting the appointment, submit fingerprints and pass a level 2 background screening.

Additionally, the following individuals, or senior management level representatives, must serve as ex officio, nonvoting advisors to the commission:[25]
- The Secretary of Transportation;
- The Secretary of Children and Families;
- The Secretary of Economic Opportunity;
- The executive director of the Department of Veterans' Affairs;
- The Secretary of Elderly Affairs;
- The Secretary of Health Care Administration;
- The director of the Agency for Persons with Disabilities; and
- A county manager or administrator who is appointed by the Governor.

Duties of the Commission

The statutory mandates for the Commission to carry out its purpose include, among other requirements, the following:
- Compile all available information on the transportation operations for and needs of the transportation disadvantaged in the state.
- Establish statewide objectives for providing transportation services for the transportation disadvantaged.
- Develop policies and procedures for the coordination[26] of local government, federal, and state funding for the transportation disadvantaged.
- Identify barriers prohibiting the coordination and accessibility of transportation services to the transportation disadvantaged and aggressively pursue the elimination of these barriers.
- Serve as a clearinghouse for information about transportation disadvantaged services, training, funding sources, innovations, and coordination efforts.
- Assist communities in developing transportation systems designed to serve the transportation disadvantaged.
- Approve the appointment of all community transportation coordinators.
- Have the authority to apply for and accept funds, grants, gifts, and services from the federal government, state government, local governments, or private funding sources.
- Make an annual report to the Governor and Legislature by January 1st, of each year.
- Prepare a statewide five-year transportation disadvantaged plan that addresses the transportation problems and needs of the transportation disadvantaged that is fully coordinated with local transit plans, compatible with local government comprehensive plans,

[24] Section 427.011(8), F.S., defines the term "purchasing agency" which is defined to mean a department or agency whose head is an ex officio, nonvoting adviser to the Commission, or an agency that purchases transportation services for the transportation disadvantaged.
[25] Section 427.012(1)(g), F.S.
[26] Section 427.077(11), F.S., defines the term "coordination" to mean the arrangement for the provision of transportation services to the transportation disadvantaged in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services.

and that ensures that the most cost-effective and efficient method of providing transportation to the disadvantaged is programmed for development.

- Develop an interagency, uniform contracting and billing and accounting system that must be used by all community transportation coordinators and their transportation operators.
- Develop and maintain a transportation disadvantaged manual.
- Design and develop transportation disadvantaged training programs.
- Coordinate all transportation disadvantaged programs with appropriate state, local, and federal agencies and public transit agencies to ensure compatibility with existing transportation systems.
- Designate the official planning agency in areas outside of the purview of an MPO.
- Develop need-based criteria that must be used by all community transportation coordinators to prioritize the delivery of nonsponsored transportation disadvantaged services[27] that are purchased with Transportation Disadvantaged Trust Fund moneys.
- Establish a review procedure to compare the rates proposed by alternate transportation operators with the rates charged by a community transportation coordinator (CTC) to determine which rate is more cost-effective.
- Conduct a cost-comparison study of single-coordinators, multicoordinators, and brokered CTC networks to ensure that the most cost-effective and efficient method of providing transportation to the transportation disadvantaged is programmed for development.
- Develop a quality assurance and management review program to monitor, based upon approved commission standards, services contracted for by an agency, and those provided by a community transportation operator.
- Ensure that local community transportation coordinators work cooperatively with local workforce development boards[28] to provide assistance in the development of innovative transportation services for participants in the welfare transition program.[29]

Commission for Transportation Disadvantaged Services and Regulations

The commission contracts with community transportation coordinators to deliver "non-sponsored" paratransit services and bus pass subsidies that are reimbursed under the Transportation Disadvantaged Trust Fund. A community transportation coordinator may directly provide transportation services and/or contract with other organizations, such as transportation operators, to serve transportation disadvantaged riders in their community. In addition to what is funded under the Transportation Disadvantaged Trust Fund, the community transportation coordinator may also work with other purchasing agencies or other programs to provide transportation services. For example, if a community transportation coordinator operates a fixed bus route system, it must provide complementary paratransit services under the federal Americans with Disabilities Act that are regulated by the Federal Transit Administration.[30]

[27] Section 427.011(12), F.S., defines the term "nonsponsored transportation disadvantaged services" to mean transportation disadvantaged services that are not sponsored or subsidized by any funding source other than the Transportation Disadvantaged Trust Fund.
[28] Workforce development boards are established in ch. 445, F.S.
[29] Section 427.013, F.S.
[30] Section 427.013, F.S.

The commission develops policies and procedures to fulfill its statutory obligations that are implemented through administrative rule. Commission policies pertaining to safety standards include requirements for community transportation coordinators and their transportation operators on:

- Drug and alcohol testing and background screening.
- Safety of passengers during transfer points.
- Providing a local toll-free number (including the TD Helpline) for passenger complaints and grievances.
- Vehicle cleanliness, seating, and communications equipment.
- Maintaining passenger/trip data.
- Establishing pick-up windows and advanced notifications for passengers to obtain services.[31]

However, these regulations do not require the use of a website or mobile application for tracking vehicle location. The commission conducts biennial quality assurance reviews of each community transportation coordinator to ensure compliance with ch. 427, F.S., and Rule 41-2, Florida Administrative Code. Community transportation coordinators that receive the FDOT/Federal Transit Administration funding are also subject to triennial reviews by the FDOT to ensure compliance with safety standards.[32]

TD Program Complaint and Grievance Process

Chapter 427, F.S., creating the TD program, does not expressly authorize the commission to hear or determine the TD service-related complaints or grievances. However, the commission requires all local systems to have written procedures in addressing/resolving complaints and grievances.[33] The commission's guidance on the complaint/grievance process identifies the following steps:

- A complaint must be filed at the local level, and is usually addressed by the community transportation coordinator.
- If the complaint is not resolved, the complainant may file a grievance with the local coordinating board. Each local coordinating board must appoint a Grievance Committee to process and investigate complaints and recommend service improvements to the local coordinating board and/or commission if a resolution is not reached.
- Once a grievance has been addressed by the local coordinating board and it remains unresolved, it may be referred to the commission to assist the grievant in facilitating a mutual acceptable resolution.[34][35]

Apart from the above grievance procedures, aggrieved parties may also have recourse through the administrative hearings process.[36]

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[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] Rule 41-2.012(5)(c), Florida Administrative Code.
[35] Commission for Transportation Disadvantaged (Commission), *Agency Analysis of 2024 Senate Bill 1380*, p. 1. (On file with the Senate Committee on Transportation).
[36] Commission for Transportation Disadvantaged (Commission), *Agency Analysis of 2024 Senate Bill 1380*, p. 4. (On file with the Senate Committee on Transportation). The administrative hearing process is pursuant to ch. 120, F.S., the Administrative Procedures Act.

Procurement of Commodities and Contractual Services

Section 287.057, F.S., requires the acquisition commodities and contractual services, in excess of $35,000, be by competitive sealed bids, request for proposals or by competitive negotiations, unless specifically exempted.[37] Specific exemptions include, but are not limited to, when there is an immediate danger to public health safety and welfare, commodities and contractual services only available from a single source, and certain FDOT contracts.[38]

III. Effect of Proposed Changes:

Definitions (Section 1)

Section 1 amends s. 427.011, F.S., to alphabetize the definitions relating to special transportation services and define the following terms:

- "Immediate family member" which is defined to mean a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of a person or the person's spouse or a person who resides in the primary residence of the person.
- "Request for service" which is defined to mean a request made to a transportation service provider by a person with a disability, or by such person's immediate family member, for paratransit service.
- "Transportation service provider" which is defined to mean an organization or entity that contracts with a local government to provide paratransit service for persons with disabilities.

Membership of the Commission (Section 2)

Section 2 amends s. 427.012, F.S., to increase the commission's membership to 14 members, rather than seven members, appointed by the Governor. The commission's membership will be as follows:

- The Director of the Agency for Persons with Disabilities (APD).
- The Secretary of Transportation or his or her designee from within the Florida Department of Transportation (FDOT).
- The Secretary of the Department of Children and Families (DCF) or his or her designee from within the DCF.
- The Secretary of the Department of Elder Affairs.
- The State Surgeon General or his or her designee from within the Department of Health.
- Two county managers or administrators, one from a rural county and one from a county with a population of more than 150,000 according to the last state census.
- The chief executive officer or president of a hospital in this state.
- The Director of the Division of Blind Services.
- Five members who have experience in transit, transportation services, innovative technology, government procurement, mobility, or service of persons with disabilities or who have disabilities and use transportation for the transportation disadvantaged.

[37] Florida Department of Transportation (FDOT), *Doing Business with the FDOT,* https://www.fdot.gov/procurement/doingbusiness.shtm (last visited January 25, 2024).
[38] Section 287.057(3), F.S.

Each commission member must be a Florida resident. Appointed members must serve four-year terms, except that initially, to provide for staggered terms, the Governor must appoint three members to serve two-year terms and two members to serve three-year terms. All subsequent appointments are for four-year terms. A member may be reappointed for one additional four-year term.

The bill removes the requirement for commission members to submit fingerprints and pass a Level 2 background screening. The bill also removes the prohibition on members of the commission having a financial relationship with specified entities or representing such entities as a lobbyist.

Duties of the Commission (Section 3)

Section 3 amends s. 427.013, F.S., to require the commission to:
- Provide best practices, latest technology innovations, and preferential vendor's lists to county transportation disadvantaged program managers.
- Annually review and conduct a performance audit of each coordinator contract and transportation operator contract in each county.
- Establish a system for the filing, receipt, and resolution of complaints regarding the transportation disadvantaged system.
- Include in its annual report a summary for each county of the number of complaints filed regarding the transportation disadvantaged system, contract satisfaction, a breakdown of the total cost of services, the amount of funds provided by the commission, and the results of annual performance audits.
- Ensure that drivers of motor vehicles used to provide paratransit service attend training programs delivered by the APD.

Requirements for Transportation Services for Persons with Disabilities (Section 5)

Section 5 creates s. 427.02, F.S., to require transportation service providers (provider) to provide training to each driver of a motor vehicle used to provide paratransit service to persons with disabilities that, at a minimum, meets the APD requirements for training and professional development of staff providing direct services to the APD's clients.

A provider must offer Internet-based, application-based, and smartphone-based ride booking and vehicle tracking services. Each of these services must be provided in accessible formats.

A provider must regularly maintain and upgrade all technology-based services and offer pre-booking and on-demand service to paratransit service users.

A provider, in collaboration with the local government that the provider contracts with, must establish:
- Reasonable time periods between a request for service and the provider's arrival at the location specified in the request, taking into account the number of persons requesting paratransit service on the same date, the distance between locations, usual or expected traffic conditions during the provision of service, and any other factor the provider or local government deems necessary. If a provider exhibits a pattern of late arrivals based on such

established reasonable time periods, the local government may authorize another provider to provide such paratransit service, including the acceptance of any prepaid vouchers for future paratransit services, notwithstanding the terms of the contract with the original provider.

- Best practices for limiting the duration of travel times for persons receiving paratransit service. To avoid unreasonably long travel times, the provider and the local government must consider the level of service offered to persons without disabilities by a public entity operating a fixed route transit service as compared to the level of paratransit service offered by the provider.[39]
- Transparency regarding the quality of paratransit service provided by the provider, including, but not limited to, data relating to the timeliness of service provided and the handling of complaints.
- An efficient system for the reporting of adverse incidents occurring during the provision of paratransit service to persons with disabilities. Such system may include assigning a quick-response code to each motor vehicle used to provide such service for the purpose of reporting adverse incidents with a smartphone or other mobile device. Reports of adverse incidents received by the local government or the special transportation service provider must be submitted to the APD and the FDOT.

The bill requires the APD, in collaboration with the FDOT, to establish requirements for investigating reported adverse incidents, including periodic review of ongoing investigations and documentation of final outcomes. The investigation of a reported adverse incident must commence within 48 hours after the APD and the FDOT receive the report.

The bill provides that s. 287.057, F.S. that exempts the procurement of contractual services from competitive bidding requirements does not apply to contracts entered into by local governments and special transportation service providers for the provision of special transportation services for persons with disabilities.

Conforming Change (Section 4)

Section 4 amends s. 427.0159, F.S., to conform a cross-reference.

Effective Date (Section 6)

Section 6 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[39] This is in accordance with 49 C.F.R. s. 37.121.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Transportation service providers will incur indeterminate costs to offer pre-booking and on-demand service to paratransit service users and to comply with other provisions of the bill.

C. Government Sector Impact:

CS/CS/SB 1380 will have an indeterminate, significant, negative fiscal impact on the Commission for Transportation Disadvantaged (CTD) associated with the requirements of the bill. The CTD would require dedicated full-time equivalent (FTE) positions and data collection systems to receive, investigate, report, and follow-up on the outcome of adverse incidents.[40]

CS/CS/SB 1380 will also have a negative fiscal impact on the Agency for Persons with Disabilities (APD) to investigate reported adverse incidents reported under provisions created in the bill.

The APD estimates a need of $975,000 in funding from the General Revenue Fund, of which $50,670 is nonrecurring. The APD estimates they would need at least 10 FTE, and related expense funding, to handle investigative requirements in the bill. This includes one position for each of their six regions, plus an additional three positions for three of their biggest regions (Suncoast, Central, and Southeast), and one position in the state office to oversee the initiative. Estimated salary costs equal $861,000, including $756,000 for positions in the six regions and $105,000 for one position in the state office,

[40] Florida Commission for the Transportation Disadvantaged, Senate Bill CS/SB 1380 analysis (February 16, 2024) (on file with the Senate Appropriations Committee on Health and Human Services).

plus an expense package for each position estimated at $114,000 including $50,670 in nonrecurring funding.[41]

The APD also estimates a need for an indeterminate amount of funding for a data reporting system for providers to report adverse incidents regarding transportation services, as required in section 5 of the bill, in the Incident Management System. The system would need to interface with the Florida Department of Transportation.[42]

Local governments that serve as community transportation coordinators may incur an indeterminate, significant negative fiscal impact associated with offering pre-booking and on-demand service to paratransit service users and establishing various technologies required by the bill.

VI. Technical Deficiencies:

Section 1 of the bill defines terms for newly created s. 427.02, F.S. However, the bill does not incorporate s. 427.02, F.S., into the cross-reference of sections that the definitions section applies to. Similar conforming changes may need to be made to the definition of "community transportation coordinator" and s. 427.013(10), F.S., providing the commission with rulemaking authority.

VII. Related Issues:

The bill creates new requirements for organizations providing transportation services to individuals with disabilities. However, the bill is not clear as to which agency is responsible for the implementation, oversight, monitoring and costs associated with certain services specified in the bill.

The bill does not define the term "adverse incident," nor does it specify whether such incidents include complaints related to violations under the federal Americans with Disabilities Act.

VIII. Statutes Affected:

This bill substantially amends the following sections of Florida Statutes: 427.011, 427.012, 427.013, and 427.0159.

This bill creates section 427.02 of the Florida Statutes.

[41] Agency for Persons with Disabilities, Senate Bill CS/SB 1380 fiscal analysis summary (February 12, 2024) (on file with the Senate Appropriations Committee on Health and Human Services).
[42] *Id.*

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 Appropriations Committee on Health and Human Services on February 20, 2024:
The committee substitute:

- Removes the requirement for transportation services providers to install an interior video camera monitoring system within each paratransit vehicle, with specific instructions on camera placement.
- Removes the requirement for transportation services providers to provide footage captured by the video camera monitoring system to the local government, the Florida Department of Transportation, the Agency for Persons with Disabilities, or legal guardian of the passenger.

CS by Transportation on February 6, 2024:
The committee substitute:

- Revises the membership of the Commission for Transportation Disadvantaged (commission).
- Removes background screening and fingerprinting requirements for commission members.
- Requires the commission to:
  - Provide best practices, latest technological innovations and preferential vendors list to county transportation disadvantaged program managers.
  - Annually review and conduct a performance audit of each coordinator contract and transportation operator contract.
  - Establish a system for resolving complaints.
- Revises commission reporting requirements to include information on complaints, cost of service, contracts, funds provided by the commission, and the results of performance audits.
- Requires paratransit drivers to attend training programs provided through the Agency for Persons with Disabilities.
- Revises provisions regarding mobile application or web-based information to provide for smartphone based ride booking and vehicle tracking.
- Requires providers to maintain and upgrade specified technology-based services.
- Requires the offering of pre-booking and on-demand services for paratransit users.

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 Appropriations Committee on Health and Human Services; the Committee on Transportation; and Senator Hutson

603-03520-24 20241380c2

A bill to be entitled

An act relating to transportation services for persons with disabilities and the transportation disadvantaged; reordering and amending s. 427.011, F.S.; defining terms; amending s. 427.012, F.S.; revising membership of the Commission for the Transportation Disadvantaged and qualifications therefor; providing for staggered terms; requiring each member to be a resident of this state; deleting provisions relating to background screening requirements; amending s. 427.013, F.S.; revising the duties of the commission; amending s. 427.0159, F.S.; conforming a cross-reference; creating s. 427.02, F.S.; providing responsibilities of a transportation service provider with respect to training of certain drivers, application-based and smartphone-based ride booking and vehicle tracking services, maintenance and upgrading of all technology-based services, and the provision of pre-booking and on-demand services for paratransit service users; requiring a transportation service provider and the local government with which the provider contracts to establish standards relating to reasonable time periods between a request for service and the arrival of the provider, limitation of the duration of travel times, transparency regarding the quality of service provided, and a system for the reporting of adverse incidents; requiring that reports of adverse incidents be submitted to the Agency for Persons with Disabilities and the Department of

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603-03520-24 20241380c2

Transportation; requiring the agency and the department to establish requirements for the investigation of adverse incidents; requiring such an investigation to commence within a certain timeframe; providing nonapplicability of provisions exempting the purchase of contractual services from competitive bidding requirements; providing an effective date.

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

Section 1. Section 427.011, Florida Statutes, is reordered and amended to read:

427.011 Definitions.—For the purposes of ss. 427.011-427.017:

(11)~~(1)~~ "Transportation disadvantaged" means those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202.

(6)~~(2)~~ "Metropolitan planning organization" means the organization responsible for carrying out transportation planning and programming in accordance with the provisions of 23 U.S.C. s. 134, as provided in 23 U.S.C. s. 104(f)(3).

(1)~~(3)~~ "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or any other unit or entity of the state or of a

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city, town, municipality, county, or other local governing body or a private nonprofit transportation service-providing agency.

(13)~~(4)~~ "Transportation improvement program" means a staged multiyear program of transportation improvements, including an annual element, which is developed by a metropolitan planning organization or designated official planning agency.

(2)~~(5)~~ "Community transportation coordinator" means a transportation entity recommended by a metropolitan planning organization, or by the appropriate designated official planning agency as provided for in ss. 427.011-427.017 in an area outside the purview of a metropolitan planning organization, to ensure that coordinated transportation services are provided to the transportation disadvantaged population in a designated service area.

(14)~~(6)~~ "Transportation operator" means one or more public, private for-profit, or private nonprofit entities engaged by the community transportation coordinator to provide service to transportation disadvantaged persons pursuant to a coordinated system service plan.

(3)~~(7)~~ "Coordinating board" means an advisory entity in each designated service area composed of representatives appointed by the metropolitan planning organization or designated official planning agency, to provide assistance to the community transportation coordinator relative to the coordination of transportation services.

(9)~~(8)~~ "Purchasing agency" means a department or agency whose head is an ex officio, nonvoting adviser to the commission, or an agency that purchases transportation services for the transportation disadvantaged.

(8)~~(9)~~ "Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

(12)~~(10)~~ "Transportation disadvantaged funds" means any local government, state, or available federal funds that are for the transportation of the transportation disadvantaged. Such funds may include, but are not limited to, funds for planning, Medicaid transportation, administration, operation, procurement, and maintenance of vehicles or equipment and capital investments. Transportation disadvantaged funds do not include funds for the transportation of children to public schools.

(4)~~(11)~~ "Coordination" means the arrangement for the provision of transportation services to the transportation disadvantaged in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services.

(7)~~(12)~~ "Nonsponsored transportation disadvantaged services" means transportation disadvantaged services that are not sponsored or subsidized by any funding source other than the Transportation Disadvantaged Trust Fund.

(5) "Immediate family member" means a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of a person or the person's spouse or a person who resides in the primary residence of the person.

(10) "Request for service" means a request made to a

transportation service provider by a person with a disability, or by such person's immediate family member, for paratransit service.

(15) "Transportation service provider" means an organization or entity that contracts with a local government to provide paratransit service for persons with disabilities.

Section 2. Section 427.012, Florida Statutes, is amended to read:

427.012 The Commission for the Transportation Disadvantaged.—There is created the Commission for the Transportation Disadvantaged in the Department of Transportation.

(1) The commission shall consist of 14 ~~seven~~ members, all of whom shall be appointed by the Governor, in accordance with the requirements of s. 20.052.

(2) The commission shall be composed of the following members:

(a) The director of the Agency for Persons with Disabilities.

(b) The Secretary of Transportation or his or her designee from within the Department of Transportation.

(c) The Secretary of Children and Families or his or her designee from within the Department of Children and Families.

(d) The Secretary of Elderly Affairs.

(e) The State Surgeon General or his or her designee from within the Department of Health.

(f) Two county managers or administrators, one from a rural county and one from a county with a population of more than 150,000 according to the last state census.

(g) The chief executive officer or president of a hospital in this state.

(h) The director of the Division of Blind Services.

(i) Five members who have experience in transit, transportation services, innovative technology, government procurement, mobility, or service of persons with disabilities or who have disabilities and use transportation for the transportation disadvantaged.

(3) Appointed members shall serve 4-year terms, except that initially, to provide for staggered terms, the Governor shall appoint three members to serve 2-year terms and two members to serve 3-year terms. All subsequent appointments shall be for 4-year terms. A member may be reappointed for one additional 4-year term.

(4) Each member must be a resident of this state.

~~(a) Five of the members must have significant experience in the operation of a business, and it is the intent of the Legislature that, when making an appointment, the Governor select persons who reflect the broad diversity of the business community in this state, as well as the racial, ethnic, geographical, and gender diversity of the population of this state.~~

~~(b) Two of the members must have a disability and use the transportation disadvantaged system.~~

~~(c) Each member shall represent the needs of the transportation disadvantaged throughout the state. A member may not subordinate the needs of the transportation disadvantaged in general in order to favor the needs of others residing in a specific location in the state.~~

~~(d) Each member shall be appointed to a term of 4 years. A member may be reappointed for one additional 4-year term.~~

~~(c) Each member must be a resident of the state and a registered voter.~~

~~(f) At any given time, at least one member must be at least 65 years of age.~~

~~(g) The Secretary of Transportation, the Secretary of Children and Families, the Secretary of Economic Opportunity, the executive director of the Department of Veterans' Affairs, the Secretary of Elderly Affairs, the Secretary of Health Care Administration, the director of the Agency for Persons with Disabilities, and a county manager or administrator who is appointed by the Governor, or a senior management level representative of each, shall serve as ex officio, nonvoting advisors to the commission.~~

~~(h) A member may not, within the 5 years immediately before his or her appointment, or during his or her term on the commission, have or have had a financial relationship with, or represent or have represented as a lobbyist as defined in s. 11.045, the following:~~

~~1. A transportation operator;~~

~~2. A community transportation coordinator;~~

~~3. A metropolitan planning organization;~~

~~4. A designated official planning agency;~~

~~5. A purchaser agency;~~

~~6. A local coordinating board;~~

~~7. A broker of transportation; or~~

~~8. A provider of transportation services.~~

(5)~~(2)~~ The chair of the commission ~~chairperson~~ shall be

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appointed by the Governor, and the vice chair ~~chairperson~~ of the commission shall be elected annually from the membership of the commission.

(6)~~(3)~~ Members of the commission shall serve without compensation but shall be allowed per diem and travel expenses~~,~~ as provided in s. 112.061.

(7)~~(4)~~ The commission shall meet at least quarterly, or more frequently at the call of the chair ~~chairperson~~. Eight ~~Four~~ members of the commission constitute a quorum, and a majority vote of the members present is necessary for any action taken by the commission.

(8)~~(5)~~ The Governor may remove any member of the commission for cause.

~~(6) Each candidate for appointment to the commission must, before accepting the appointment, undergo background screening under s. 435.04 by filing with the Department of Transportation a complete set of fingerprints taken by an authorized law enforcement agency. The fingerprints must be submitted to the Department of Law Enforcement for state processing, and that department shall submit the fingerprints to the Federal Bureau of Investigation for federal processing. The Department of Transportation shall screen the background results and inform the commission of any candidate who does not meet level 2 screening standards. A candidate who has not met level 2 screening standards may not be appointed to the commission. The cost of the background screening may be borne by the Department of Transportation or the candidate.~~

(9)~~(7)~~ The commission shall appoint an executive director who shall serve under the direction, supervision, and control of

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the commission. The executive director, with the consent of the commission, shall employ such personnel as may be necessary to perform adequately the functions of the commission within budgetary limitations. Employees of the commission are exempt from the Career Service System.

(10)~~(8)~~ The commission shall appoint a technical working group that includes representatives of private paratransit providers. The technical working group shall advise the commission on issues of importance to the state, including information, advice, and direction regarding the coordination of services for the transportation disadvantaged. The commission may appoint other technical working groups whose members may include representatives of community transportation coordinators; metropolitan planning organizations; regional planning councils; experts in insurance, marketing, economic development, or financial planning; and persons who use transportation for the transportation disadvantaged, or their relatives, parents, guardians, or service professionals who tend to their needs.

(11)~~(9)~~ The commission is assigned to the office of the secretary of the Department of Transportation for administrative and fiscal accountability purposes, but it shall otherwise function independently of the control, supervision, and direction of the department.

(12)~~(10)~~ The commission shall develop a budget pursuant to chapter 216. The budget is not subject to change by the department staff after it has been approved by the commission, but it shall be transmitted to the Governor, as head of the department, along with the budget of the department.

Section 3. Present subsections (8) through (29) of section 427.013, Florida Statutes, are redesignated as subsections (10) through (31), respectively, new subsections (8) and (9) are added to that section, and subsection (5) and present subsections (13), (20), and (28) of that section are amended, to read:

427.013 The Commission for the Transportation Disadvantaged; purpose and responsibilities.—The purpose of the commission is to accomplish the coordination of transportation services provided to the transportation disadvantaged. The goal of this coordination is to assure the cost-effective provision of transportation by qualified community transportation coordinators or transportation operators for the transportation disadvantaged without any bias or presumption in favor of multioperator systems or not-for-profit transportation operators over single operator systems or for-profit transportation operators. In carrying out this purpose, the commission shall:

(5) Serve as a clearinghouse for information about transportation disadvantaged services, training, funding sources, innovations, and coordination efforts and provide best practices, latest technology innovations, and preferential vendors lists to county transportation disadvantaged program managers.

(8) Annually review and conduct a performance audit of each coordinator contract and transportation operator contract in each county.

(9) Establish a system for the filing, receipt, and resolution of complaints regarding the transportation disadvantaged system.

(15)~~(13)~~ Make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1 of each year. The report shall summarize for each county the number of complaints filed regarding the transportation disadvantaged system, contract satisfaction, a breakdown of the total cost of services, the amount of funds provided by the commission, and the results of annual performance audits.

(22)~~(20)~~ Ensure that drivers of motor vehicles used to provide paratransit service attend ~~Design and develop transportation disadvantaged~~ training programs delivered by the Agency for Persons with Disabilities.

(30)~~(28)~~ In consultation with the Agency for Health Care Administration and the Department of Transportation, develop an allocation methodology that equitably distributes all transportation funds under the control of the commission to compensate counties, community transportation coordinators, and other entities providing transportation disadvantaged services. The methodology shall separately account for Medicaid beneficiaries. The methodology shall consider such factors as the actual costs of each transportation disadvantaged trip based on prior-year information, efficiencies that a provider might adopt to reduce costs, results of the rate and cost comparisons conducted under subsections (26) ~~(24)~~ and (27) ~~(25)~~, as well as cost efficiencies of trips when compared to the local cost of transporting the general public. This subsection does not supersede the authority of the Agency for Health Care Administration to distribute Medicaid funds.

Section 4. Subsection (4) of section 427.0159, Florida

Statutes, is amended to read:

427.0159 Transportation Disadvantaged Trust Fund.—

(4) A purchasing agency may deposit funds into the Transportation Disadvantaged Trust Fund for the commission to implement, manage, and administer the purchasing agency's transportation disadvantaged funds, as defined in s. 427.011 ~~s. 427.011(10)~~.

Section 5. Section 427.02, Florida Statutes, is created to read:

427.02 Transportation services for persons with disabilities.—

(1) A transportation service provider must:

(a) Provide training to each driver of a motor vehicle used to provide paratransit service to persons with disabilities which, at a minimum, meets requirements established by the Agency for Persons with Disabilities for training and professional development of staff providing direct services to clients of the agency.

(b) Offer Internet-based, application-based, and smartphone-based ride booking and vehicle tracking services. Each of these services must be provided in accessible formats.

(c) Regularly maintain and upgrade all technology-based services.

(d) Offer both pre-booking and on-demand service to paratransit service users.

(2) A transportation service provider, in collaboration with the local government with which the provider contracts, shall establish:

(a) Reasonable time periods between a request for service

and the arrival of the transportation service provider at the location specified in the request, taking into account the number of persons requesting paratransit service on the same date, the distance between locations, usual or expected traffic conditions during the provision of paratransit service, and any other factor deemed necessary by the provider or the local government. If a transportation service provider exhibits a pattern of late arrivals based on such established reasonable time periods, the local government may authorize another provider to provide such paratransit service, including the acceptance of any prepaid vouchers for future paratransit service, notwithstanding the terms of the contract with the original provider.

(b) Best practices for limiting the duration of travel times for persons receiving paratransit service. To avoid unreasonably long travel times, the provider and the local government shall consider the level of service offered to persons without disabilities by a public entity operating a fixed route as compared to the level of paratransit service offered by the transportation service provider in accordance with 49 C.F.R. s. 37.121.

(c) Transparency regarding the quality of paratransit service provided by the transportation service provider, including, but not limited to, data relating to the timeliness of paratransit service provided and the handling of complaints.

(d) An efficient system for the reporting of adverse incidents occurring during the provision of paratransit service to persons with disabilities. Such system may include the assignment of a quick-response code to each motor vehicle used

to provide such service for the purpose of reporting adverse incidents with a smartphone or other mobile device. Reports of adverse incidents received by the local government or the transportation service provider shall be submitted to the Agency for Persons with Disabilities and the Department of Transportation.

(3) The Agency for Persons with Disabilities, in collaboration with the Department of Transportation, shall establish requirements for the investigation of adverse incidents reported pursuant to paragraph (2)(d), including periodic review of ongoing investigations and documentation of final outcomes thereof. The investigation of a reported adverse incident must commence within 48 hours after receipt of the report by the agency and the department.

(4) The provisions of s. 287.057 which exempt the purchase of contractual services from competitive bidding requirements do not apply to contracts entered into by local governments and transportation service providers for the provision of paratransit service to persons with disabilities under this section.

Section 6. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Feb 27th
Meeting Date

SB 1380
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida Public Transportation Association.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1432
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Book
SUBJECT:	Commercial Sexual Exploitation of Children
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Fav/CS**
2.	Sneed	McKnight	AHS	**Favorable**
3.	Rao	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1432 requires the Department of Children and Families (department) to provide the Legislature with individual-level data for commercial sexual exploitation of children (CSEC) victims who are assessed for a safe harbor placement in an extractable format that allows for aggregation and analysis. Additionally, the bill requires the department to include the individual-level data in its annual report to the Legislature.

The bill will have an indeterminate, but likely insignificant, negative fiscal impact on state government. *See* Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

The Department of Children and Families

The Legislature recognizes the need for specialized care and services for children who are victims of commercial sexual exploitation.[1] Commercial sexual exploitation of children (CSEC)

[1] Section 39.001(5), F.S.

is defined as the use of any person under the age of 18 years for sexual purposes in exchange for or the promise of money, goods, or services.[2]

When the Department of Children and Families (department) receives a report of human trafficking to the Child Abuse Hotline, the department investigates the report. If commercial sexual trafficking is suspected or verified, the department and community-based care agencies conduct a multidisciplinary staffing on the case.[3] The staffing includes local experts in child protection, child welfare, medical professionals, and law enforcement to assess the needs of the child and determine if the victim needs placement in a "safe house" or "safe foster home."[4] Multidisciplinary staffing teams are also charged with assessing the local services available for victims of commercial sexual exploitation.[5]

Commercial Sexual Exploitation of Children

It is difficult to obtain an accurate count of commercially sexually exploited children because these victims are not readily identifiable.[6] CSEC victims do not have immediately recognizable characteristics, many do not have identification, and they are often physically or psychologically controlled by adult traffickers; as such, they rarely disclose or provide information on exploitation.[7]

In 2022, the department verified 354 victims of commercial sexual exploitation from 3,408 reports.[8] Of the reports referred for investigation, most came from the Department of Juvenile Justice, the Department of Corrections, or criminal justice personnel and law enforcement.[9] Of the 354 verified commercially sexually exploited children, 25 percent were in out-of-home care.[10]

Safe Houses and Safe Foster Homes

Current law defines and provides for the certification of specialized residential options for CSEC victims.[11] The law defines a "safe foster home" to mean a foster home certified by the department to care for sexually exploited children and a "safe house" to mean a group residential

[2] Section 409.016, F.S.
[3] Section 409.1754, F.S.
[4] *Id.*
[5] *Id.*
[6] The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida, 2016*, p. 2, available at: https://oppaga.fl.gov/Products/ReportDetail?rn=16-04 (last visited 1/24/24).
[7] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Commercial Sexual Exploitation of Children and Sex Trafficking*, available at: https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/commercial_sexual_exploitation_of_children_and_sex_trafficking.pdf (last visited 1/25/24).
[8] The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida 2023*, available at: https://oppaga.fl.gov/Products/ReportDetail?rn=23-08 (last visited 1/25/24).
[9] *Id.*
[10] *Id.*
[11] *See* Section 409.1678, F.S.

placement certified by the department to care for sexually exploited children.[12] To be certified, a safe house or safe foster home must:

- Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.
- Serve exclusively one sex.
- Group CSEC victims by age or maturity level.
- Care for CSEC victims in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for other populations if the children who have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.
- Have awake staff members on duty 24 hours a day, if a safe house.
- Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.
- Meet other criteria established by department rule,[13] including personnel qualifications, staffing ratios, and types of services offered.[14]

Safe Harbor Placement

If a dependent child age 6 years or older is suspected of being or has been found to be a victim of commercial sexual exploitation, the department is required to determine the child's need for services and need for placement in a safe house of safe foster home.[15]

Current law requires the department to annually report to the Legislature the following information about the prevalence of CSEC:[16]

- The specialized services provided and placement of victims of CSE;
- The local service capacity to meet the specialized needs of CSE victims;
- The placement of children in safe houses and safe foster homes during the year, including the criteria used to determine the child's placement;
- The number of children who were evaluated for placement;
- The number of children who were placed in safe houses or safe foster homes based upon the evaluation;
- The number of children who were not placed; and
- The department's response to the findings and recommendations made by the Office of Program Policy Analysis and Government Accountability in its annual study on CSE.

The department is also required to maintain data specifying the number of CSEC victims placed in a safe foster house or safe foster home, the number of CSEC victims who were referred for placement in a safe harbor setting but none was available, and the counties in which the safe harbor placements were unavailable.[17]

[12] Section 409.1678(1), F.S.
[13] Rule 65C-46.020, F.A.C.
[14] Section 409.1678(2)(c), F.S.
[15] Section 39.524, F.S.
[16] Section 39.524(3), F.S.
[17] *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 39.524, F.S., to change the term "child commercial sexual exploitation" to the more commonly used "commercial sexual exploitation of children." This change aligns terminology between chs. 39 and 409, F.S.

The bill requires the Department of Children and Families (department) to include redacted supporting assessments that include anonymized individual-level data for children who are assessed for placement in safe houses and safe foster homes in its annual report to the Legislature.

The bill also requires the department to provide the Legislature with individual-level data for children assessed for placement in safe houses or safe foster homes in an extractable format that allows for aggregation and analysis upon the request of the Legislature.

Section 2 provides that the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate, but likely insignificant, negative fiscal impact on the Department of Children and Families due to the increased requirement to maintain anonymized individual-level data for children assessed for placement in safe harbor homes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.524 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 Children, Families, and Elder Affairs on January 30, 2024:
This CS requires supporting assessments for victims of CSE that are placed in safe harbor placements to be redacted and contain anonymized individual-level data.

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 Children, Families, and Elder Affairs; and Senator Book

586-02671-24 20241432c1

A bill to be entitled

An act relating to commercial sexual exploitation of children; amending s. 39.524, F.S.; requiring the Department of Children and Families to include individual-level child placement assessment data in its annual report to the Legislature on the commercial sexual exploitation of children; requiring the department to provide the Legislature with individual-level child placement assessment data in a certain format; providing an effective date.

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

Section 1. Subsection (3) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(3)(a) By October 1 of each year, the department, with information from community-based care agencies, shall report to the Legislature on the prevalence of ~~child~~ commercial sexual exploitation of children; the specialized services provided and placement of such children; the local service capacity assessed pursuant to s. 409.1754; the placement of children in safe houses and safe foster homes during the year, including the criteria used to determine the placement of children; the number of children who were evaluated for placement; the number of children who were placed based upon the evaluation; the number of children who were not placed; and the department's response to the findings and recommendations made by the Office of Program Policy Analysis and Government Accountability in its

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

586-02671-24 20241432c1

annual study on commercial sexual exploitation of children, as required by s. 409.16791; and the redacted supporting assessments, including anonymized individual-level data for children who are assessed for such placement.

(b) The department shall maintain data specifying the number of children who were verified as victims of commercial sexual exploitation, who were referred to nonresidential services in the community, who were placed in a safe house or safe foster home, and who were referred to a safe house or safe foster home for whom placement was unavailable, and shall identify the counties in which such placement was unavailable. The department shall maintain individual-level data for children who are assessed for such placement in an extractable format that allows for aggregation and analysis upon request by the Legislature. The department shall include this data in its report under this subsection so that the Legislature may consider this information in developing the General Appropriations Act.

Section 2. This act shall take effect July 1, 2024.

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The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1432
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eileen Segal - Miami Dade PTA Phone 305 995 1102

Address 1450 NE 2 Ave # 103 Email Eileensegalpta@gmail.com
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Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1432
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. (Florida PTA)

Phone 407 855-7604

Address 1747 Orlando Central Pkwy
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City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

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Florida PTA

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1436
INTRODUCER:	Appropriations Committee on Agriculture, Environment, and General Government and Senator Burton
SUBJECT:	Consumer Finance Loans
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	**Favorable**
2.	Sanders	Betta	AEG	**Fav/CS**
3.	Moody	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1436 revises laws governing consumer finance loans, which are loans of $25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

The bill modifies the limits of consumer finance loan interest rates to no more than 36 percent per annum, computed on the first $10,000 of the principal amount; 30 percent per annum on that part of the principal amount exceeding $10,000 and up to $20,000; and 24 percent per annum on that part of the principal amount exceeding $20,000 and up to $25,000.

The bill increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

The bill revises the licensure process to allow a single licensure application for the principle place of business and all branches. The bill defines a "branch" as any location, other than a licensee's principal place of business, at which a licensee operates or conducts consumer finance loan business or controls for the purpose of conducting consumer finance loan business.

The bill requires consumer finance lenders, in any county designated in a Federal Emergency Management Agency (FEMA) major disaster declaration, to suspend for 90 days after the initial date of such declaration, the following:

- The application of delinquency charges for payments in default for at least 12 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

The bill also requires consumer finance lenders to:

- Provide notice to the Office of Financial Regulation (OFR) of any assistance program offered by the lender to borrowers impacted by a disaster subject to a FEMA major disaster declaration;
- Offer a free credit education program or seminar to borrowers at the time a loan is made; and
- Annually report to the OFR information detailing loans issued by the lender during the previous calendar year.

The OFR estimates the bill will result a recurring reduction of $5,000 in revenues per fiscal year but the loss is negligible and would not impact operations. *See* Section V. Fiscal Impact Statement.

The effective date of the bill is July 1, 2024.

II. Present Situation:

The OFR's Division of Consumer Finance (Division) licenses and regulates non-depository financial service entities and individuals, and conducts investigations of licensed entities to determine their compliance with Florida law.[1] One such product regulated by the OFR is consumer finance loans.

A consumer finance loan is a loan of money, credit, goods, or interests valued at $25,000 or less with permitted interest rates between 18 and 30 percent per year.[2] A consumer finance loan is not a traditional loan made by a bank, credit union, or similar institution. The consumer finance lenders do not accept deposits, and earn their revenue from the fees charged on the loans they make.[3]

Licensure

Entities that engage in the business of making consumer finance loans must be licensed by the OFR pursuant to the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Each location of a

[1] Fla. Office of Fin. Reg., *Division of Consumer Finance: What We Do*, https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm (last visited January 24, 2024).
[2] Sections 516.01(2) and 516.031(1), F.S. *See also*, Fla. Office of Fin. Reg, *Consumer Finance Companies*, https://flofr.gov/sitePages/ConsumerFinanceCompanies.htm (last visited January 24, 2024).
[3] Naveen Reddy, *What are the Primary Functions of Finance Companies?* (Nov. 9, 2020), https://smallbusiness.chron.com/primary-functions-finance-companies-40480.html (last visited January 24, 2024). Also note, payday lenders are separately regulated pursuant to ch. 560, F.S.

consumer finance lender must be separately licensed, even if the separate locations are operated by the same business entity.[4]

A consumer finance lender applicant must submit an application fee of $625 and an investigation fee of $200 with its application for licensure.[5] Consumer finance lender licenses granted under the Act must be renewed every two years, at which time the licensee must pay a $625 biennial license fee.[6]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[7]

Permissible Interest Rates and Fees

Florida's prohibition on usury[8] generally prohibits[9] interest rates in excess of 18 percent per annum simple interest on any loan, advance of money, line of credit, or forbearance.[10] Licensed consumer finance lenders, however, may offer interest rates greater than 18 percent per annum simple interest, up to the following limits, which are based on the amount of the loan's principal:[11]

- 30 percent on the first $3,000 of the principal amount;
- 24 percent on principal above $3,000 and up to $4,000; and
- 18 percent on principal above $4,000 and up to $25,000.

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following:[12]

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation, if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;

[4] Sections 516.01(6) and 516.05(3), F.S.
[5] Section 516.03(1), F.S. *See also*, Fla. Office of Fin. Reg., *Form OFR-516-01 Application for Consumer Finance Company License*, https://flofr.gov/sitePages/documents/OFR-516-01.pdf (last visited January 24, 2024).
[6] Sections 516.03(1) and 516.05(1) & (2), F.S.
[7] Section 516.02(4), F.S.
[8] Usury is the act of lending money at an interest rate that is considered unreasonably high or that is higher than the rate permitted by law. Julia Kagan, Investopedia, *What is Usury? Definition, How It Works, Legality, and Example* (February 7, 2022), https://www.investopedia.com/terms/u/usury.asp (last visited January 23, 2024). *See* ss. 687.02 and 687.03, F.S.
[9] Various lenders and credits licensed or chartered under the laws of the United States or specified chapters of the Florida Statutes may charge interest at the maximum rate of interest permitted by law for similar loans or extensions of credit. *See* s. 687.12(1), F.S.
[10] Sections 687.02 and 687.12, F.S.
[11] Section 516.031(1), F.S.
[12] Section 516.031(3), F.S.

- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed, of up to $15 for payments due monthly, $7.50 for payments due semimonthly or every two weeks, and five dollars if three payments are due in the same calendar month; and
- A bad check charge of up to $20.

A consumer finance lender may offer optional credit property, credit life, and disability insurance at the borrower's expense via a deduction from the principal amount of the loan.[13]

Licensees under ch. 516, F.S., are expressly prohibited from charging prepayment penalties on consumer finance loans.[14]

Federal Emergency Management Agency

Robert T. Stafford Disaster Relief and Emergency Assistance Act[15] (Stafford Act)

Under the Stafford Act, Public Law No. 100-107, the President of the United States (President) is authorized to declare emergency and major disaster declarations. An emergency declaration can be declared for any occasion or instance the President determines federal assistance is needed. Emergency declarations supplement state and local or Indian tribal emergency service efforts, which include protection of lives, property, public health and safety or lessens the threat of a catastrophe in any part of the United States.[16] Assistance provided under an emergency declaration may not exceed five million dollars. The President can declare a major disaster for any natural event[17] which the President has determined has caused severe damage beyond the combined capabilities of state and local governments to respond.[18] Such declaration of a major disaster provides federal assistance programs to individuals and public infrastructure, including emergency and permanent work.[19]

Before such declaration can be determined, the governor of a state or Tribal Chief Executive of the affected Tribe must submit a request, within thirty days of the occurrence, to the President

[13] Section 516.35(2), F.S.
[14] Section 516.031(6), F.S.
[15] The Stafford Act constitutes the statutory authority for most Federal disaster response activities, especially as related to the FEMA and FEMA programs. PL 100-707 (November 23, 1988); amended the Disaster Relief Act of 1974, PL 93-288. https://www.fema.gov/disaster/stafford-act (last visited January 24, 2024).
[16] FEMA, *How a Disaster Gets Declared, Emergency Declarations*, https://www.fema.gov/disaster/how-declared (last visited January 24, 2024).
[17] Natural events include hurricanes, tornadoes, storms, high water, wind-driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides, snowstorms, mudslides, or drought, or regardless of cause, fire, flood or explosion. FEMA, How a Disaster Gets Declared, *Major Disaster Declarations*, https://www.fema.gov/disaster/how-declared#:~:text=The%20President%20can%20declare%20a,that%20the%20President%20determines%20has (last visited January 24, 2024).
[18] *Id*.
[19] *Id*.

through a FEMA Regional Administrator. Federal assistance is determined by the Governor's or Tribal Chief's request and the needs identified during preliminary damage assessments.[20]

III. Effect of Proposed Changes:

This bill revises laws governing consumer finance loans, which are loans of $25,000 or less for which a lender charges an interest rate greater than 18 percent per annum. The Florida Consumer Finance Act (Act) in ch. 516, F.S., provides an exemption from Florida's prohibition against usurious contracts, under which any interest rate greater than 18 percent per annum is prohibited.

Section 1 amends s. 516.01, F.S., to define the term "branch" to mean any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under this chapter or which the licensee owns or controls for the purpose of conducting consumer finance loan business.

Section 2 amends s. 516.02, F.S., to clarify a person may not engage in the business of making consumer finance loans or operate a branch of such a business unless first authorized to do so.

Section 3 amends s. 516.03, F.S., to revise the licensure process to allow a single licensure application for the principal place of business and all branches. The bill provides applications for a license for the principal place of business to be accompanied by a nonrefundable investigation fee of $200.

Section 4 amends s. 516.031, F.S., to increase the maximum interest rate that may be charged to no more than 36 percent per annum, computed on the first $10,000 of the principal amount; 30 percent per annum on that part of the principal amount exceeding $10,000 and up to $20,000; and 24 percent per annum on that part of the principal amount exceeding $20,000 and up to $25,000.

Section 4 also increases the number of days a payment must be in default before a delinquency charge may be imposed from 10 days in default to 12 days in default.

Section 5 amends s. 516.15, F.S., relating to duties, to require consumer finance licensees to provide written notice to the OFR of any assistance programs offered by the lender to borrowers impacted by a FEMA declared disaster within 10 days of establishment of the program. Assistance programs established by consumer finance licensees may include, but are not limited to, deferments, forbearance, waiver of late fees, payment modification or changing payment due dates.

The bill requires consumer finance licensees, as licensed under s. 516, F.S., to offer borrowers, in writing or electronically, at the time a loan is made, a free credit education program or seminar provided by the licensee or a third party provider. The credit education program may address, but is not limited to the following:

- The importance and methodology of establishing a household budget;
- The impact, value of, and ways to improve a credit score; and

[20] *Id.*

- The importance and methodology of establishing household savings; and
- Ways to obtain a free copy of a credit report; dispute an error in a credit report; and, manage and prevent identity theft.

The bill requires the credit education program or seminar must be offered at no cost to the borrower, and the bill specifies a licensee may not require a borrower to participate in a credit education program or seminar as a condition of receiving a loan.

Section 6 creates s. 516.38, F.S., to require consumer finance licensees to annually report, by March 15, 2025, and by each March 15th thereafter, aggregated and anonymized data that does not reference any borrower's nonpublic personal information to the OFR detailing the loans issued by the lender during the previous calendar year. The report must include:

- The number of locations held by the licensee as of December 31;
- The number of loan originations by the licensee under all licenses;
- The total dollar amount of loans and the number of loans outstanding by the licensee as of December 31;
- The total number of loans in which the licensee holds a security interest in collateral as of December 31;
- The total number of unsecured loans as of December 31;
- The total number of loans, separated by principal amount, in the following ranges as of December 31:
  - Up to and including $5,000;
  - $5,001 to $10,000;
  - $10,001 to $15,000;
  - $15,001 to $20,000; and
  - $20,001 to $25,000;
- The total number and amount of loans charged off as of December 31; and
- The total dollar amount of loans and the number of loans with delinquency status listed as:
  - Current or less than 30 days past due;
  - From 30 to 59 days past due;
  - From 60 to 89 days past due; and
  - At least 90 days past due.

Furthermore, licensees claiming any information submitted in the annual report contains a trade secret must submit to the OFR an affidavit and designate the information claimed to be a trade secret in accordance with s. 655.0591, F.S. The OFR may publish a report using the annual report data, provided all data published in the report is anonymized and aggregated from all licensees.

Section 7 creates s. 516.39, F.S., to require consumer finance lenders, in any county designated in a FEMA major disaster declaration, to suspend the following for 90 days after the initial date of such declaration:

- The application of delinquency charges for payments in default for at least 10 days;
- Repossessions of collateral pledged to a consumer finance loan; and
- The filing of civil actions for the collection of amounts owed under a consumer finance loan.

Section 8 reenacts s. 516.19, F.S., relating to penalties, to incorporate amendments made to ss. 516.02 and 516.031, F.S.

Section 9 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill allows the OFR to publish a report of information submitted by consumer finance lenders detailing their lending activities during the prior calendar year, "provided that all data published in the report is anonymized and aggregated from all licensees." However, the lack of a public records exemption related to the reports submitted by insurers may result in the OFR having to provide the reports of individual lenders to a person making such a public records request. The report in each consumer finance lender's report to the OFR could receive trade secret protection to the extent the lender, pursuant to s. 655.0591, F.S., claims a trade secret and is successful in obtaining a declaratory judgment from a circuit court that the documents in question constitute protected trade secrets.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill revises the licensure process for consumer finance companies to allow a single licensure application for the principle place of business and all branches, thereby potentially reducing application and investigative fees. A fee bill is not anticipated.

B. Private Sector Impact:

The bill may result in more consumer finance loans being issued by Florida-licensed consumer finance lenders to borrowers who cannot currently qualify for loans given the

current interest rate limits. However, such borrowers will be subject to greater interest payments than are allowed under current law.

Applicants for the new branch office license will no longer be required to pay the $200 background investigation fee for each additional location. This may result in applicants saving up to $5,000 in reduced fees per fiscal year.[21]

Licensees under ch. 516, F.S., may incur costs to establish the credit education program or seminar required under the bill.

C. Government Sector Impact:

The bill proposes to create a branch license in lieu of a full license for each additional location of a licensee, which will not include the $200 background investigation fee, resulting in a fee reduction. The OFR estimates a recurring reduction of $5,000 in revenues but the loss is negligible and would not impact operations. Furthermore, the reduction in staff time reviewing full license applications for each additional location when replaced with a branch office license would likely offset any loss in revenue.[22]

The changes proposed within the bill would require the OFR to update its internal licensing system to create a branch license and annual reporting functionality. The cost of such technology changes would be negligible and can be absorbed within existing resources.[23]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires consumer finance lender licensees to provide annual reporting information to the OFR by March 15, 2025, and each March 15th thereafter, but does not provide a date for the OFR to aggregate and anonymize such data.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.01, 516.02, 516.03, 516.031, and 516.15.

This bill creates the following sections of the Florida Statutes: 516.38 and 516.39.

This bill reenacts section 516.19 of the Florida Statutes.

[21] Office of Financial Regulation, *2024 Agency Legislative Bill Analysis of SB 1436*, at pg. 5, January 17, 2024 (on file with the Senate Committee on Agriculture, Environment, and General Government).
[22] *Id* at pg. 5.
[23] *Id* at pg. 6.

IX. Additional Information:

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

CS by Appropriations Committee on Agriculture, Environment, and General Government on February 13, 2024:
The committee substitute:

- Provides every licensee under s. 516, F.S., has a duty to offer borrowers at the time a loan is made, a free credit education program or seminar provided by the licensee or a third party provider. The credit education program may address, but is not limited to the following:
  - The importance and methodology of establishing a household budget;
  - The impact, value of, and ways to improve a credit score; and
  - The importance and methodology of establishing household savings; and
  - Ways to obtain a free copy of a credit report; dispute an error in a credit report; and, manage and prevent identity theft; and
- Specifies a licensee may not require a borrower to participate in a credit education program or seminar as a condition of receiving a loan.

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 Appropriations Committee on Agriculture, Environment, and General Government; and Senator Burton

601-03262-24 20241436c1

A bill to be entitled

An act relating to consumer finance loans; reordering and amending s. 516.01, F.S.; defining the term "branch"; amending s. 516.02, F.S.; prohibiting a person from operating a branch of a business making consumer finance loans before obtaining a license from the Office of Financial Regulation; amending s. 516.03, F.S.; specifying application fees for branch licenses; revising the applicability of investigation fees; making a technical change; amending s. 516.031, F.S.; revising the maximum interest rate on consumer finance loans; revising the minimum amount of time before which a delinquency charge for each payment in default may be imposed; amending s. 516.15, F.S.; requiring licensees offering an assistance program to borrowers after a federally declared disaster to send a specified notice to the office within a certain timeframe; providing construction; requiring licensees to offer borrowers a certain education program or seminar; specifying the topics that such program or seminar may address; requiring that such program or seminar be offered at no cost to borrowers; prohibiting licensees from requiring borrowers to participate in such education program or seminar as a condition of a loan; creating s. 516.38, F.S.; requiring licensees to file annual reports with the office; providing for rulemaking by the Financial Services Commission; specifying requirements for the reports; providing requirements for a licensee

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

601-03262-24 20241436c1

claiming that submitted information contains a trade secret; authorizing the office to publish a report in a certain manner; creating s. 516.39, F.S.; requiring certain licensees to suspend specified actions for a certain timeframe after a federally declared disaster; reenacting s. 516.19, F.S., relating to penalties, to incorporate the amendments made to ss. 516.02 and 516.031, F.S., in references thereto; providing an effective date.

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

Section 1. Section 516.01, Florida Statutes, is reordered and amended to read:

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

(1) "Branch" means any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under this chapter or which the licensee owns or controls for the purpose of conducting business under this chapter.

(3) "Consumer finance borrower" or "borrower" means a person who has incurred either direct or contingent liability to repay a consumer finance loan.

(4)~~(2)~~ "Consumer finance loan" means a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.

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

(2) ~~(3)~~ "Commission" means the Financial Services Commission.

(9) ~~(4)~~ "Office" means the Office of Financial Regulation of the commission.

(6) ~~(5)~~ "Interest" means the cost of obtaining a consumer finance loan and includes any profit or advantage of any kind whatsoever that a lender may charge, contract for, collect, receive, or in anywise obtain, including by means of any collateral sale, purchase, or agreement, as a condition for a consumer finance loan. Charges specifically permitted by this chapter, including commissions received for insurance written as permitted by this chapter, shall not be deemed interest.

(7) ~~(6)~~ "License" means a permit issued under this chapter to make and collect loans in accordance with this chapter at a single place of business.

(8) ~~(7)~~ "Licensee" means a person to whom a license is issued.

(5) ~~(8)~~ "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon

dissolution or has contributed 10 percent or more of the capital.

Section 2. Subsection (1) of section 516.02, Florida Statutes, is amended to read:

516.02 Loans; lines of credit; rate of interest; license.—

(1) A person may ~~must~~ not engage in the business of making consumer finance loans or operate a branch of such business unless she or he is authorized to do so under this chapter or other statutes and unless the person first obtains a license from the office.

Section 3. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and

disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements of s. 516.05(10). At the time of making such application, the applicant shall pay to the office a nonrefundable biennial license fee of $625 for the principal place of business and for each branch application filed. Applications for a license for the principal place of business~~, except for applications to renew or reactivate a license,~~ must also be accompanied by a nonrefundable investigation fee of $200. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this chapter ~~act~~ if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 4. Subsection (1) and paragraph (a) of subsection (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 36 ~~30~~ percent per annum, computed on the first $10,000 ~~$3,000~~ of the principal amount; 30 ~~24~~ percent per annum on that part of

the principal amount exceeding $10,000 ~~$3,000~~ and up to $20,000 ~~$4,000~~; and 24 ~~18~~ percent per annum on that part of the principal amount exceeding $20,000 ~~$4,000~~ and up to $25,000. The original principal amount as used in this section is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations used shall be simple interest and not add-on interest or any other computations. If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges provided in this section, further or other charges or amount for any examination, service, commission, or other thing or otherwise may not be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount of up to $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each

line-of-credit account;

3. Charges paid for the brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security if paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation if secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan if the premium does not exceed the fees which would otherwise be payable, which may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge for each payment in default for at least 12 ~~10~~ days if the charge is agreed upon, in writing, between the parties before imposing the charge. Delinquency charges may be imposed as follows:

a. For payments due monthly, the delinquency charge for a payment in default may not exceed $15.

b. For payments due semimonthly, the delinquency charge for

a payment in default may not exceed $7.50.

c. For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days after the discovery of such error.

Section 5. Subsections (5) and (6) are added to section 516.15, Florida Statutes, to read:

516.15 Duties of licensee.—Every licensee shall:

(5) In the event of a Federal Emergency Management Agency response to a Presidential Disaster Declaration in the state, if the licensee offers any assistance program to borrowers impacted by the disaster, within 10 days after the licensee's establishment of the program, send written notice to the office in either physical or electronic format and include the following information, subject to change as any additional declarations are issued or declarations are revoked:

(a) The licensed locations affected by the disaster declaration, including physical addresses, if applicable;

(b) The telephone number, e-mail address, or other contact information for the licensee;

(c) A brief description of the assistance program available

to borrowers in the affected areas; and

(d) The start date, and end date if known, of the assistance program.

For purposes of this subsection, assistance programs may include, but are not limited to, deferments, forbearance, waiver of late fees, payment modification, or changing payment due dates.

(6) Offer the borrower at the time a loan is made a credit education program or seminar provided by the licensee or a third-party provider, either in writing or electronically. The credit education program or seminar may address, but need not be limited to, any of the following topics:

(a) The importance and methodology of establishing a household budget.

(b) The impact, value of, and ways to improve a credit score.

(c) The importance and methodology of establishing household savings.

(d) Ways to obtain a free copy of a credit report.

(e) Ways to dispute an error in a credit report.

(f) Ways to manage and prevent identity theft.

A credit education program or seminar offered under this subsection must be offered at no cost to the borrower. A licensee may not require a borrower to participate in a credit education program or seminar as a condition of receiving a loan.

Section 6. Section 516.38, Florida Statutes, is created to read:

516.38 Annual reports by licensees.—

(1) By March 15, 2025, and each March 15 thereafter, a licensee shall file a report with the office in a form and manner prescribed by commission rule. The report must include each of the items specified in subsection (2) for the preceding calendar year using aggregated and anonymized data and without reference to any borrower's nonpublic personal information.

(2) The report must include the following information for the preceding calendar year:

(a) The number of locations held by the licensee under this chapter as of December 31 of the preceding calendar year.

(b) The number of loan originations by the licensee from all licenses held under this chapter during the preceding calendar year.

(c) The total dollar amount of loans and the number of loans outstanding with the licensee from all licenses held under this chapter as of December 31 of the preceding calendar year.

(d) The total dollar amount of loans and the number of loans in which the licensee holds a security interest in collateral as of December 31 of the preceding calendar year.

(e) The total dollar amount of loans and the number of unsecured loans as of December 31 of the preceding calendar year.

(f) The total number of loans, separated by principal amount, in the following ranges as of December 31 of the preceding calendar year:

1. Up to and including $5,000.

2. Five thousand and one dollars to $10,000.

3. Ten thousand and one dollars to $15,000.

4. Fifteen thousand and one dollars to $20,000.

5. Twenty thousand and one dollars to $25,000.

(g) The total dollar amount of loans and the number of loans charged off as of December 31 of the preceding calendar year.

(h) The total dollar amount of loans and the number of loans with delinquency status listed as:

1. Current or less than 30 days past due.

2. From 30 to 59 days past due.

3. From 60 to 89 days past due.

4. At least 90 days past due.

(3) A licensee claiming that any information submitted in the report contains a trade secret must submit to the office an accompanying affidavit in accordance with s. 655.0591 and designate the information claimed to be a trade secret pursuant to s. 655.0591.

(4) The office may publish a report of information submitted pursuant to this section, provided that all data published in the report is anonymized and aggregated from all licensees.

Section 7. Section 516.39, Florida Statutes, is created to read:

516.39 Suspension of penalties and remedial measures after federal disaster declaration.—In the event of a Federal Emergency Management Agency response to a Presidential Disaster Declaration in the state, a licensee operating in a county designated in the declaration must suspend for a period of 90 days after the date of the initial declaration the following:

(1) The application of delinquency charges under s.

516.031(3)(a)9.

(2) Repossessions of collateral pledged to loans made under this chapter.

(3) The filing of civil actions for the collection of amounts owed for loans made under this chapter.

Section 8. For the purpose of incorporating the amendments made by this act to sections 516.02 and 516.031, Florida Statutes, in references thereto, section 516.19, Florida Statutes, is reenacted to read:

516.19 Penalties.—Any person who violates any of the provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6), or s. 516.07(1)(e) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

1436 - Consumer Finance Loans
Bill Number or Topic

Amendment Barcode (if applicable)

Name Scott Jenkins

Phone 850 661 0829

Address 201 E. Park Ave Ste 200B
Street

Email scott@dacfl.com

TLH, FL 32312
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Financial Services Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02-27-2024
Meeting Date

SB 1436
Bill Number (if applicable)

Topic CONSUMER FINANCE LOANS

Amendment Barcode (if applicable)

Name TAMMY FECCI

Job Title ASSOCIATE OF LIFE AND DIGNITY

Address FLORIDA CONFERENCE OF
Street
CATHOLIC BISHOPS
City *State* *Zip*

Phone 239-218-8661

Email tfecci@flacathconf.org

Speaking: ☐ For ☒ Against ☒ Information

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

Representing FLORIDA CONFERENCE OF CATHOLIC BISHOPS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24
Meeting Date

FISCAL POLICY
Committee

1436
Bill Number or Topic

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Phone 813 ~~7[illegible]~~ 435 5335

Address 3830 W CYPRESS ST
Street

Email advocacy@floridachurches.org

TAMPA FL 33607
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
FL FAITH ADVOCACY OFFICE

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

1436
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

Phone 850-321-9386

Address 579 E. Call St.
Street

Email

Tallahassee, FL 32301
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: FL Center for Fiscal & Economic Policy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	SB 1448
INTRODUCER:	Senator Gruters
SUBJECT:	Transparency in Social Media
DATE:	February 26, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Favorable**
2.	Henderson	Harkness	ACJ	**Favorable**
3.	McMillan	Yeatman	FP	**Favorable**

I. Summary:

SB 1448 creates the "Transparency in Social Media Act," to require each foreign-adversary-owned entity[1] operating a social media platform in Florida to publicly disclose the core functional elements of the social media platform's content curation and algorithms. The disclosures must identify the following:

- Factors that influence content ranking and visibility;
- Measures taken to address misinformation and harmful content; and
- The process of personalization and targeting of content.

The bill also requires each foreign-adversary-owned entity to make publicly available the source code of its algorithm through an open-source license, as well as implement a user verification system for each user and organization that purchased advertisements concerning social or political issues.

The bill may have a workload impact on the Department of Legal Affairs. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Internet and Social Media Platforms

There are many ways in which individuals access computer systems and interact with systems and other individuals on the Internet. Examples include:

[1] The United States Department of Commerce has identified China (including Hong Kong), Cuba, Iran, North Korea, Russia, and the Nicolás Maduro regime in Venezuela as foreign adversaries. *See* 15 CFR § 7.4.

- Social media sites, which are websites and applications that allow users to communicate informally with others, find people, and share similar interests;[2]
- Internet platforms, which are servers used by an Internet provider to support Internet access by their customers;[3]
- Internet search engines, which are computer software used to search data (such as text or a database) for specified information;[4] and
- Access software providers, which are providers of software (including client or server software) or enabling tools for content processing.[5]

Such platforms earn revenue through various modes and models. Examples include:

- Data monetization.[6] This uses data that is gathered and stored on the millions of users that spend time on free content sites, including specific user location, browsing habits, buying behavior, and unique interests. This data can be used to help e-commerce companies tailor their marketing campaigns to a specific set of online consumers. Platforms that use this model are typically free for users to use.[7]
- Subscription or membership fees. This model requires users pay for a particular or unlimited use of the platform infrastructure.[8]
- Transaction fees. This model allows platforms to benefit from every transaction that is enabled between two or more actors. An example is AirBnB, where users transacting on the site are charged a fee.[9]

Trade Secrets

Generally, trade secrets are intellectual property rights on confidential information that are used by a business and provide an economic advantage to that business.[10]

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[2] DelValle Institute Learning Center, *Social Media Platforms*, *available at* https://delvalle.bphc.org/mod/wiki/view.php?pageid=65 (last visited Jan. 29, 2024).
[3] IGI Global, *Internet Platform*, *available at* https://www.igi-global.com/dictionary/internet-platform/15441 (last visited Jan. 29, 2024).
[4] Merriam Webster, *Search Engine*, *available at* https://www.merriam-webster.com/dictionary/search%20engine (last visited Jan. 29, 2024).
[5] 47 U.S.C. § 230(f)(4) defining "access software provider to mean a provider of software (including client or server software), or enabling tools that do any one or more of the following: (i) filter, screen, allow, or disallow content; (ii) pick, choose, analyze, or digest content; or (iii) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.
[6] The Alexander von Humboldt Institute for Internet and Society, *How do digital platforms make their money?*, July 29, 2019, *available at* https://www.hiig.de/en/how-do-digital-platforms-make-their-money/ (last visited Jan. 29, 2024).
[7] Investopedia, *How Do Internet Companies Profit with Free Services?*, *available at* https://www.investopedia.com/ask/answers/040215/how-do-internet-companies-profit-if-they-give-away-their-services-free.asp#:~:text=Profit%20Through%20Advertising,content%20is%20through%20advertising%20revenue.&text=Each%20of%20these%20users%20represents,and%20services%20via%20the%20Internet (last visited Jan. 29, 2024).
[8] HIIS, *supra* note 6.
[9] *Id.*
[10] *See* The Florida Bar, *Trade Secret* (Dec. 14, 2022) https://www.floridabar.org/practice-areas/trade-secrets/ (last visited Jan. 29, 2024).

Section 812.081, F.S., defines a "trade secret" as information[11] used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida courts,[12] requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.[13]

Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony[14] for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.[15]
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
  - Deprive or withhold from the trade secret's owner the control of a trade secret, or
  - Appropriate a trade secret to his or her own use or to the use of another.

Florida Data Privacy Regulations

In 2023, the Florida Legislature passed SB 262, which created a unified scheme to allow Florida's consumers to control the digital flow of their personal information. SB 262 was signed by the Governor on June 6, 2023.[16] Among other things, SB 262 created ch. 501, part V, F.S., which takes effect on July 1, 2024, and gives Florida consumers the right to:

- Confirm and access their personal data;
- Delete, correct, or obtain a copy of that personal data;
- Opt out of the processing of personal data for the purposes of targeted advertising, the sale of personal data, or profiling in furtherance of a decision that produces a legal or similarly significant effect concerning a consumer;
- Opt out of the collection or processing of sensitive data, including precise geolocation data; and
- Opt out of the collection of personal data collected through the operation of a voice recognition or facial recognition feature.

[11] A trade secret may manifest as any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Section 812.081, F.S.
[12] See, e.g., *Sepro Corp. v. Dep't. of Envt'l. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[13] Section 812.081(1)(c), F.S.
[14] A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. *See* ss. 775.082 and 775.083, F.S.
[15] The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.
[16] *See* ch. 2023-201, Laws of Fla.

The data privacy provisions of ch. 501, part V, F.S., generally apply to "controllers," businesses that collect Florida consumers' personal data, make in excess of $1 billion in global gross annual revenues, and meet one of the following thresholds:

- Derives 50 percent or more if its global gross annual revenues from the online sale of advertisements, including from providing targeted advertising or the sale of ads online;
- Operates a consumer smart speaker and voice command component service with an integrated virtual assistant connected to a cloud computing service that uses hands-free verbal activation; or
- Operates an app store or digital distribution platform that offers at least 250,000 different software applications for consumers to download and install.

A controller who operates an online search engine is required to make available an up-to date plain language description of the main parameters that are most significant in determining ranking and the relative importance of those main parameters, including the prioritization or deprioritization of political partisanship or political ideology in search results. A controller must also conduct and document a data protection assessment of certain processing activities involving personal data. Additionally, a controller is required to provide consumers with a reasonably accessible and clear privacy notice, updated at least annually.

A violation of ch. 501, part V, F.S is an unfair and deceptive trade practice actionable under ch. 501, part II, F.S., to be enforced by the Department of Legal Affairs (DLA). The DLA may provide a right to cure a violation of ch. 501, part V, F.S., by providing written notice of the violation and then allowing a 45-day period to cure the alleged violation. The DLA is required to make a report publicly available by February 1 each year on the DLA's website that describes any actions it has undertaken to enforce ch. 501, part V, F.S.

SB 262 also created s. 112.23, F.S., which prohibits employees of a governmental entity from using their position or any state resources to communicate with a social media platform to request that it remove content or accounts. Additionally, a governmental entity cannot initiate or maintain any agreements with a social media platform for the purpose of content moderation. These prohibitions do not apply to routine account maintenance, attempts to remove accounts or content pertaining to the commission of a crime, or efforts to prevent imminent bodily harm, loss of life, or property damage.

Florida Deceptive and Unfair Trade Practices Act

History and Purpose

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[17] The FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.[18] The FDUTPA is based on federal law, and s. 501.204(2), F.S., provides that it is the

[17] Ch. 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

[18] *See* s. 501.202, F.S. Trade or commerce means the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. "Trade or commerce" shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity. *See* s. 501.203(8), F.S.

intent of the Legislature that due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to section 5 of the Federal Trade Commission Act.[19]

The State Attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.[20] The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction.[21] The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.[22] Consumers may also file suit through private actions.[23]

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to $10,000 per willful violation.[24]

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation.
- Actual damages, attorney fees, and court costs, where a person has suffered a loss due to a FDUTPA violation.[25]

Freedom of Speech and Internet Platforms

Section 230

The federal Communications Decency Act (CDA) was passed in 1996 "to protect children from sexually explicit Internet content."[26] 47 U.S. Code § 230 (Section 230) was added as an amendment to the CDA to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum."[27]

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[19] *See* s 501.204(2), F.S.
[20] *See* ss. 501.203(2), 501.206, and 501.207, F.S.
[21] Section 501.203(2), F.S.
[22] *Id.*
[23] Section 501.211, F.S.
[24] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Section 501.2075, F.S. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[25] Section 501.211(1) and (2), F.S.
[26] *See 1 Force v. Facebook, Inc.*, 934 F.3d 53, 63 (2d Cir. 2019) (citing *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 173 (2d Cir. 2016) (citing 141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon)).
[27] *Force*, 934 F.3d at 63 (quoting *Ricci v. Teamsters Union Local* 456, 781 F.3d 25, 28 (2d Cir. 2015) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

Congress stated in Section 230 that "[i]t is the policy of the United States—(1) to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[28]

Specifically, Section 230 states that no provider or user of an interactive computer service may be held liable on account of:[29]

- Any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- Any action taken to enable or make available to information content providers or others the technical means to restrict access to material from any person or entity that is responsible for the creation or development of information provided through any interactive computer service.

Section 230 eased Congressional concern regarding the outcome of two inconsistent judicial decisions,[30] both of which applied traditional defamation law to internet providers.[31] The first decision held that an interactive computer service provider could not be liable for a third party's defamatory statement, however the second decision imposed liability where a service provider filtered content in an effort to block obscene material.[32] To provide clarity, Section 230 provides that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[33] In light of the objectives of Congress, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.[34]

Section 230 specifically addresses how the federal law affects other laws. Section 230 prohibits all inconsistent causes of action and prohibits liability imposed under any state or local law.[35] Section 230 does not affect federal criminal law, intellectual property law, the Electronic Communications Privacy Act of 1986, or sex trafficking law.

There have been criticisms of the broad immunity provisions or liability shields which force individuals unhappy with third-party content to sue the user who posted it. While this immunity has fostered the free flow of ideas on the Internet, critics have argued that Section 230 shields publishers from liability for allowing harmful content.[36] Congressional and executive proposals

[28] 47 U.S.C. § 230(b)(1)–(2).
[29] 47 U.S.C. § 230(c).
[30] *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991) and *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).
[31] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173).
[32] *Force*, 934 F.3d at 63 (quoting *LeadClick*, 838 F.3d at 173 (citing 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox))).
[33] 47 U.S.C. § 230(c)(1).
[34] *Force*, 934 F.3d at 63 (quoting LeadClick, 838 F.3d at 173).
[35] 47 U.S.C. § 230(e).
[36] Zoe Bedell and John Major, What's Next for Section 230? A Roundup of Proposals Lawfare, (July 29, 2020) https://www.lawfareblog.com/whats-next-section-230-roundup-proposals (last visited Jan. 29, 2024).

to limit immunity for claims relating to platforms purposefully hosting content from those engaging in child exploitation, terrorism, and cyber-stalking have been introduced.[37] Bills have been filed that would require internet platforms to have clear content moderation policies, submit detailed transparency reports, and remove immunity for platforms that engage in certain behavioral advertising practices.[38] Proposals have also been offered to limit the liability shield for internet providers who restrict speech based on political viewpoints.[39]

Recently, the United States Supreme Court heard *Twitter, Inc. v. Taamneh* and *Gonzalez v. Google*; these cases alleged that Twitter and Google aided and abetted terrorists who posted content to their platforms, and a key issue in both cases was whether social media companies can be held liable for their targeted recommendation algorithms.[40] However, the court decided both cases on alternative grounds, which leaves the question unanswered.

Freedom of Speech

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.[41] "The First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well."[42] "Online speech is equally protected under the First Amendment as there is 'no basis for qualifying the level of First Amendment scrutiny that should be applied' to online speech."[43] It is well established that a government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.[44] The government bears the burden of demonstrating the constitutionality of any such content-based regulation.[45]

The United States Supreme Court has recognized that First Amendment protection extends to corporations.[46] "This protection has been extended by explicit holdings to the context of political speech."[47] Under these precedents, it is well settled that political speech does not lose First Amendment protection "simply because its source is a corporation."[48] Generally, the government

[37] *Id*.
[38] Bedell, *supra* note 20; PACT Act, S.4066, 116th Cong. (2020); BAD ADS Act, S.4337, 116th Cong. (2020).
[39] Bedell, *supra* note 20; Limiting Section 230 Immunity to Good Samaritans Act, S.3983, 116th Cong. (2020).
[40] *See Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (2023) and *Gonzalez v. Google LLC*, 143 S. Ct. 1191 (2023).
[41] *See De Jonge v. Oregon*, 299 U.S. 353, 364–65(1937)(incorporating right of assembly);(incorporating right of freedom of speech).
[42] *Douglas v. City of Jeannette (Pennsylvania)*, 319 U.S. 157, 179, (1943) (Jackson, J., concurring in result).
[43] *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).
[44] *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 665-66 (2004).
[45] *Id.* at 660.
[46] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010).
[47] *Id.* (citing *NAACP v. Button v.* 371 U.S.415, 428-429 (1963); *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936)).
[48] *Id.* (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. at 784 (1978); *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 8, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) (plurality opinion) ("The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster" (quoting *Bellotti*, 435 U.S., at 783)).

may not require a corporation to host another's speech absent a showing of a compelling state interest.[49]

Supremacy Clause, Commerce Clause, Bills of Attainder, and Contracts

The U.S. Constitution's Supremacy Clause establishes that federal statutes, treaties, and the U.S. Constitution are the "supreme Law of the Land."[50]

Federal law may preempt state action that thwarts federal law in three ways:

- By an express statement of its intent to occupy a field. Express preemption need not be total, however—it can preempt all state laws or only certain state laws.
- With "a framework of regulation so pervasive that Congress left no room for the States to supplement it or where the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject."[51]
- Where state law conflicts, leaving an actor to choose whether to adhere to state or federal law.[52] The state law may also be subject to conflict preemption where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[53]

The federal government's authority to act in the realm of foreign affairs is vested by the U.S. Constitution.[54] State laws that intrude into this field of foreign affairs, even where not preempted by prior federal action, improperly impact foreign affairs and are therefore invalid.[55] Courts have generally held, however, that the state's intrusion must have more than an "incidental effect" on foreign affairs in order to be considered an encroachment onto the federal government's powers.[56]

Article I, section 8, clause 3 of the U.S. Constitution grants Congress the power to "regulate commerce with foreign nations ...." Conversely, this provision serves as a limitation on states' authority to encroach onto the realm of foreign commerce where such action creates a risk of conflicts with foreign governments or impedes the federal government's ability to speak with one voice in regulating industry affairs with foreign states.[57] The "dormant foreign commerce

[49] *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980); *First National Bank of Boston v. Belliotti*, 438 U.S. (1978); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).
[50] U.S. CONST., Art. VI, cl. 2.
[51] *Arizona v. U.S.*, 567 U.S. 387, 399 (2012).
[52] *Crosby v. Nat'l. Foreign Trade Council*, 530 U.S. at 372 (2000).
[53] *Nat'l Foreign Trade Council, Inc. v. Giannoulias*, 523 F. Supp. 2d 731 (N.D. Ill. Feb. 23, 2007), *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).
[54] *See, e.g.*, U.S. CONST., Art. I, s. 8 (power to declare war, maintain a military, and regulate foreign commerce); U.S. CONST., Art. II, s. 2 (power to enter into treaties); U.S. CONST., Art. III, s. 2 (power to hear case involving foreign states and citizens).
[55] *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n. v. Garamendi*, 539 U.S. 396 (2003) (finding that the President's powers in foreign policy were so great as to outweigh any need for a direct expression of preemption.)
[56] *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).
[57] *Japan Line v. County of Los Angeles*, 441 U.S. 434, 446 (1979).

power"[58] voids state acts upon foreign commerce because of the Constitution's overriding concern for national uniformity in foreign commerce—even in instances when Congress has not affirmatively acted.[59] Courts also generally subject state action to a heightened scrutiny that assumes the supremacy of federal action in the realm of foreign relations.[60]

Additionally, Congress has the power to regulate commerce among the states.[61] Though phrased as a grant of regulatory power to Congress, the Commerce Clause has long been understood to have a negative or dormant aspect that denies the states the power to unjustifiably discriminate against or burden the interstate flow of articles of commerce.[62]

Article I, section 9, of the U.S. Constitution provides that Congress shall pass "No Bill of Attainder or ex post facto Law." Similarly, Article I, section 10, of the U.S. Constitution prohibits the states from enacting bills of attainder. The Supreme Court has described a bill of attainder as "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of judicial trial."[63]

Article I, section 10, of the U.S. Constitution prohibits a state from passing any law impairing the obligation of contracts. Similarly, Article I, section 10 of the Florida Constitution prohibits the passage of laws impairing the obligation of contracts.

The International Emergency Economic Powers Act (IEEPA)

The IEEPA gives the President of the United States regulatory authority over a variety of economic transactions in the event of a national emergency that constitutes an unusual and extraordinary threat.[64] As of September 1, 2023, Presidents had declared 69 national emergencies invoking IEEPA, 39 of which are ongoing.[65] Executive Orders 13,873[66] and 14,034 invoked

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[58] *See generally*, Stephen Mulligan, Congressional Research Service, *Constitutional Limits on States' Power over Foreign Affairs*, 3-4 (Aug. 15, 2022), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10808 (last visited Jan. 29, 2024).
[59] *United States v. Davila-Mendoza*, 972 F.3d 1264 (11th Cir. 2020).
[60] "The premise […] is that the Commerce Clause analysis is identical, regardless of whether interstate or foreign commerce is involved. This premise […] must be rejected. When construing Congress' power to 'regulate Commerce with foreign Nations,' a more extensive constitutional inquiry is required." *Japan Line* at 446.
[61] U.S. CONST., Art. I, s. 8
[62] *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality of Or*., 511 U.S. 93, 98 (1994).
[63] *See Nixon v. Administrator of General Services*, 433 U.S. 425 (1977).
[64] *See* Congressional Research Service, *Montana's TikTok Ban, an Injunction, and Pending Legal Actions* (December 8, 2023), *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10972#:~:text=Commerce%20Clause%3A%20The%20court%20found,concept%20Montana%20did%20not%20contest. (last visited Jan. 29, 2024). *See also* 50 U.S.C. § 1701.
[65] *See* Congressional Research Service, The International Emergency Economic Powers Act: Origins, Evolution, and Use (September 28, 2023), *available at* https://crsreports.congress.gov/product/pdf/R/R45618 (last visited Jan. 29, 2024).
[66] The Supply Chain Rule implements Executive Orders 13873 and 14034, titled Securing the Information and Communications Technology and Services Supply Chain (ICTS). Invoking National Emergencies Act (50 U.S.C. § 1601) and citing the International Emergency Economic Powers Act (50 U.S.C. §1701), then-President Trump declared a national emergency because of the threat of foreign adversaries exploiting vulnerabilities in ICTS. In response to this threat, Executive Order 13873 prohibits transactions involving foreign-owned ICTS that present (1) an undue risk of sabotage or subversion to ICTS in the United States, (2) an undue risk of catastrophic effects on the security or resiliency of critical infrastructure or the digital economy in the United States, or (3) an unacceptable risk to U.S. national security or the security and safety of U.S. persons. The order delegates implementation to the Department of Commerce. In June 2021, President Biden issued

IEEPA authority in response to concerns about foreign adversaries' access to American digital data.[67] Executive Order 13,873, references risks posed by foreign adversaries, which the order defines as any foreign government or foreign person "engaged in a long-term pattern or serious instances of conduct significantly adverse" to U.S. security or the safety of U.S. persons.[68] Subsequently, the Department of Commerce identified China (including Hong Kong), Cuba, Iran, North Korea, Russia, and the Nicolás Maduro regime in Venezuela as foreign adversaries.[69]

Florida SB 7072 (2021)

In 2021, the Florida Legislature passed SB 7072, which addressed concerns related to social media platforms. SB 7072 was signed by the Governor on May 24, 2021. Section 501.2041, F.S., was created, which provides that a social media platform must:

- Publish standards used for determining how to censor, deplatform, and shadow ban users, and apply such standards in a consistent manner;
- Inform each user about any changes to its user rules, terms, and agreements before implementing the changes and not make changes more than once every 30 days;
- Notify a user in a specified manner censoring or deplatforming the user;
- Allow a user to request the number of other individuals who were shown the user's content or posts, and provide such information upon such request by the user;
- Provide users with an option to opt out of post-prioritization and shadow banning algorithms to allow sequential or chronological posts and content;
- Provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annual notice on the use of algorithms for post-prioritization and shadow banning;
- Ensure that posts by or about candidates for office in Florida are not shadow banned;
- Allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after the user receives the required notice; and
- Ensure that journalistic enterprises are not censored, deplatformed, or shadow banned.

In s. 501.2041, F.S., "Social media platform" is defined as any information service, system, Internet search engine, or access software that:

- Provides or enables computer access by multiple users to a computer server, including an Internet platform and/or a social media site;

Executive Order 14034, which directed the Secretary of Commerce to evaluate the risks posed by connected software applications, commonly called "apps." The order identified additional criteria for Commerce to consider when evaluating transactions involving apps under the Supply Chain Rule. Factors include the app's capacity to enable espionage and the sensitivity of data collected. In June 2023, Commerce published a final rule (88 FR 39353), effective July 17, 2023, that expressly includes apps in the definition of ICTS and adds app-specific risk factors to the Supply Chain Rule. See Congressional Research Service, *The Information and Communications Technology and Services (ICTS) Rule and Review Process* (June 22, 2023), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11760 (last visited Jan. 29, 2024).

[67] See Congressional Research Service, *Montana's TikTok Ban, an Injunction, and Pending Legal Actions* (December 8, 2023), available at https://crsreports.congress.gov/product/pdf/LSB/LSB10972#:~:text=Commerce%20Clause%3A%20The%20court%20found,concept%20Montana%20did%20not%20contest (last visited Jan. 29, 2024).

[68] *Id*.

[69] 15 CFR § 7.4.

- Operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity;
- Does business in Florida; and
- Satisfies at least one of the following thresholds:
  - Annual gross revenues in excess of $100,000,000, as adjusted in January of each odd numbered year to reflect any increase in the Consumer Price Index; or
  - At least 100,000,000 monthly individual platform participants globally.

Section 501.2041, F.S., also provides for enforcement by permitting the Department of Legal Affairs to find a social media platform who fails to comply with the requirements stated above to be in violation of the Florida Deceptive and Unfair Trade Practices Act. Additionally, a user may bring a private cause of action against a social media platform for failing to consistently apply certain standards for censoring or deplatforming without proper notice.

Litigation History

Immediately after the bill was signed by the Governor, but prior to the bill's effective date of July 1, 2021, the plaintiff filed a complaint in the U.S. District Court for the Northern District of Florida challenging the constitutionality of many of the bill's provisions and exceptions, and immediately moved the Court for a preliminary injunction. The District Court granted the preliminary injunction on June 30, 2021.[70]

The filed complaint alleges the following:

- Count 1 of the complaint alleges the Act "violates the First Amendment's free-speech clause by interfering with the providers' editorial judgment, compelling speech, and prohibiting speech."
- Count 2 alleges the Act "is vague in violation of the Fourteenth Amendment."
- Count 3 alleges the Act "violates the Fourteenth Amendment's equal protection clause by impermissibly discriminating between providers that are or are not under common ownership with a large theme park and by discriminating between providers that do or do not meet the Act's size requirements."
- Count 4 alleges the Act "violates the Constitution's dormant commerce clause."
- Count 5 alleges the Act "is preempted by 47 U.S.C. § 230(e)(3), which, together with § 230(c)(2)(A), expressly prohibits imposition of liability on an interactive computer service—this includes a social-media provider—for action taken in good faith to restrict access to material the service finds objectionable."[71]

The District Court indicated that the law was not clearly settled related to issues about First Amendment treatment of social-media providers: "The plaintiffs say, in effect, that they should be treated like any other speaker. The State says, in contrast, that social-media providers are more like common carriers, transporting information from one person to another much as a train transports people or products from one city to another. The truth is in the middle."[72]

[70] *NetChoice, LLC v. Moody*, 546 F. Supp. 3d 1082 (N.D. Fla. 2021) (NetChoice, LLC, and the Computer & Communications Industry Association are trade associations whose members include social media providers).
[71] *NetChoice, LLC*, 546 F. Supp. 3d at 1085.
[72] *NetChoice, LLC*, 546 F. Supp. 3d at 1091.

The District Court determined that strict scrutiny applied as the standard to be used:

"Viewpoint- and content-based restrictions on speech are subject to strict scrutiny. A law restricting speech is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." Laws that are facially content-neutral, but that cannot be justified without reference to the content of the regulated speech, or that were adopted because of disagreement with the speaker's message, also must satisfy strict scrutiny."[73]

The District Court enjoined the State from enforcing any provision of s. 501.2041, F.S., on preemption and First Amendment grounds.

The State filed an appeal of the District Court's decision in the U.S. Court of Appeals for the Eleventh Circuit.

On May 23, 2022, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's preliminary injunction in part, and vacated and remanded it in part.[74]
The Eleventh Circuit found the following provisions of SB 7072, to likely violate the First Amendment:

- Section 106.072(2), F.S., which pertains to candidate deplatforming;
- Section 501.2041(2)(h), F.S., which pertains to the use of algorithms for the purpose of post-prioritization or shadow banning candidates;
- Section 501.2041(2)(j), F.S., which pertains to journalistic enterprises;
- Section 501.2041(2)(b), F.S., which pertains to the consistent application of censorship, deplatforming, and shadow banning standards;
- Section 501.2041(2)(c), F.S., which limits the number of changes that can be made to once every 30 days;
- Sections 501.2041(2)(f) and 501.2041(2)(g), F.S., which pertain to categorizing algorithms used for post-prioritization and shadow banning, as well as allowing for user opt-outs; and
- Section 501.2041(2)(d), F.S., which pertains to notifying a user when their content is censored or shadow banned.

However, the Eleventh Circuit found the following provisions of SB 7072, to likely not violate the First Amendment:

- Section 501.2041(2)(a), F.S., which pertains to the publication of standards used for determining how to censor, deplatform, and shadow ban;
- Section 501.2041(2)(c), F.S., which pertains to informing users to any changes to its user rules, terms, and agreements before implementing the changes;
- Section 501.2041(2)(e), F.S., which pertains to user view counts;
- Section 501.2041(2)(i), F.S., which pertains to user data access; and
- Section 106.072(4), F.S., which pertains to free advertising for a candidate.[75]

The United States Supreme Court is set to hear oral arguments on February 26, 2024.

[73] *NetChoice, LLC*, 546 F. Supp. 3d at 1093.
[74] *Moody v. NetChoice, LLC*, 34 F.4th 1196 (11th Cir. 2022).
[75] *Moody* 34 F.4th 1196.

Effect of Proposed Changes:

The bill creates s. 501.20411, F.S., to be cited as the "Transparency in Social Media Act." Additionally, the Legislature finds that:

- Social media platforms play a significant role in shaping public discourse and opinions;
- Algorithms used by social media platforms can influence user behavior and content visibility;
- Transparency in the functioning of such algorithms and in political and social advertising is vital for safeguarding democratic values and user privacy; and
- Ownership of social media platforms by foreign entities can raise concerns regarding foreign influence and data security.

The bill provides the following definitions:

- "Social media platform" means a public online service that allows users to create and share or participate in social networking; and
- "Social or political advertising" means any advertisement on a social media platform that discusses social or political issues or is intended to influence public opinion or electoral outcomes.

The bill requires each foreign-adversary-owned entity operating a social media platform in Florida to publicly disclose the core functional elements of the social media platform's content curation and algorithms. The disclosures must identify the following:

- Factors that influence content ranking and visibility;
- Measures taken to address misinformation and harmful content; and
- The process of personalization and targeting of content.

The bill requires each foreign-adversary-owned entity operating a social media platform in Florida to make publicly available the source code of its algorithm through an open-source license.

The bill also requires each foreign-adversary-owned entity operating a social media platform to implement a user verification system for each user and organization that purchased advertisements concerning social or political issues. The system must verify key identifying information, including citizenship, residency, and age of the user or the individuals that own the organization, as applicable. Once verified, the identity of the purchaser of each social or political advertisement must be disclosed with the advertisement.

A foreign-adversary-owned entity operating a social media platform that violates the provisions of this bill is liable up to $10,000 for each discrete violation. The Department of Legal Affairs is given enforcement authority.

The bill takes effect July 1, 2024.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

See the "Present Situation," in Section II of this bill analysis.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Foreign-adversary-owned entities will be required to implement the provisions in the bill, which includes disclosure requirements and a user verification system.

C. Government Sector Impact:

There will be an indeterminate negative workload impact to the DLA to enforce the provisions in the bill. There may be a positive fiscal impact to the DLA as there is a $10,000 fee for each violation.

V. Technical Deficiencies:

None.

VI. Related Issues:

The definition provided in the bill for "social or political advertising," is potentially unclear and overbroad.

The bill defines "foreign-adversary-owned entity" as a social media company that is owned or substantially controlled by nationals, governments, or corporations domiciled, incorporated, or otherwise holding residence in a country designated as a foreign adversary under 15 C.F.R. s 7.4. It is unclear what amount or level of ownership is intended by use of "owner," or what "substantially controlled" means as used in the definition.

Lack of clarity in the definitions could lead to problems in compliance and enforcement.

VII. Statutes Affected:

This bill creates section 501.20411 of the Florida Statutes.

VIII. 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 Gruters

22-01114A-24 20241448__

A bill to be entitled

An act relating to transparency in social media; creating s. 501.20411, F.S.; providing a short title; providing legislative findings; providing definitions; requiring foreign-adversary-owned entities operating social media platforms in the state to publicly disclose specified information in a certain manner; requiring foreign-adversary-owned entities operating social media platforms to implement a user verification system for certain entities; providing penalties; requiring enforcement by the Department of Legal Affairs; providing an effective date.

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

Section 1. Section 501.20411, Florida Statutes, is created to read:

501.20411 Transparency in Social Media Act.—

(1) This section may be cited as the "Transparency in Social Media Act."

(2) The Legislature finds that:

(a) Social media platforms play a significant role in shaping public discourse and opinion.

(b) Algorithms used by social media platforms can influence user behavior and content visibility.

(c) Transparency in the functioning of such algorithms and in political and social advertising is vital for safeguarding democratic values and user privacy.

(d) Ownership of social media platforms by foreign entities

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22-01114A-24 20241448__

can raise concerns regarding foreign influence and data security.

(3) For purposes of this section, the term:

(a) "Algorithm" has the same meaning as in s. 501.2041(1).

(b) "Foreign-adversary-owned entity" means a social media company that is owned or substantially controlled by nationals, governments, or corporations domiciled, incorporated, or otherwise holding residence in a country designated as a foreign adversary under 15 C.F.R. s. 7.4.

(c) "Social media platform" means a public online service that allows users to create and share or participate in social networking.

(d) "Social or political advertising" means any advertisement on a social media platform that discusses social or political issues or is intended to influence public opinion or electoral outcomes.

(4)(a) Each foreign-adversary-owned entity operating a social media platform in the state must publicly disclose the core functional elements of the social media platform's content curation and algorithms.

(b) The disclosure must identify:

1. The factors that influence content ranking and visibility.

2. Measures taken to address misinformation and harmful content.

3. The process of personalization and targeting of content.

(5) Each foreign-adversary-owned entity operating a social media platform must make publicly available the source code of its algorithms through an open-source license.

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

(6)(a) Each foreign-adversary-owned entity operating a social media platform must implement a user verification system for each user and organization that purchases advertisements concerning social or political issues. The system must verify key identifying information, including citizenship, residency, and age of the user or the individuals that own the organization, as applicable.

(b) Once verified, the identity of the purchaser of each social or political advertisement must be disclosed with the advertisement.

(7)(a) A foreign-adversary-owned entity operating a social media platform that violates this section is liable up to $10,000 for each discrete violation.

(b) The Department of Legal Affairs shall enforce this section.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/SB 1464
INTRODUCER:	Fiscal Policy Committee and Senator Calatayud
SUBJECT:	Traffic Enforcement
DATE:	February 28, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Vickers	TR	**Favorable**
2.	Wells	Jerrett	ATD	**Favorable**
3.	Johnson	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1464 creates additional requirements governing the installation and use of traffic infraction detectors, commonly known as red light cameras. Specifically, the bill provides:

- A county or municipality must enact an ordinance in order to authorize the placement or installation of, or to authorize contracting with a vendor for the placement or installation of, one or more traffic infraction detectors installed on or after July 1, 2025.
- A county or municipality operating traffic infraction detectors must annually report the results of all traffic infraction detectors within the county's or municipality's jurisdiction.
- Before a county or municipality contracts or renews a contract to place or install traffic infraction detectors, the county or municipality must approve the contract or contract renewal at a regular or special meeting of the county's or municipality's governing body.
- The bill provides requirements for the public hearing on a proposed ordinance and the annual reporting relating to traffic infraction detectors.
- The compliance or sufficiency of compliance with the above reporting requirement may not be raised in a proceeding challenging specified traffic violations enforced by a traffic infraction detector.

Additionally, the bill provides that a county or municipality that does not comply with the specified reporting requirements are suspended from operating traffic infraction detectors until such noncompliance is corrected.

The bill requires municipalities and counties operating traffic infraction detectors to report specified information to the Department of Highway Safety and Motor Vehicles (DHSMV). DHSMV must publish each of these reports on its website.

The bill prohibits counties or municipalities to use a contract procured with an governmental entity outside this state for any camera system used to detect traffic infractions.

The bill prohibits a governmental entity from knowingly entering into ore renewing a contract for a camera to enforce traffic infractions where the contracting vendor is owned by the government of a foreign country of concern or a foreign country of concern has a controlling interest in the contracting vendor.

The bill will have an indeterminate, but likely insignificant, fiscal impact on the state. The bill will have an indeterminate negative fiscal impact on local governments that use cameras to enforce certain traffic infractions. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Camera Systems – Foreign Countries of Concern

Section 287.138, F.S., prohibits governmental entities[1] for contracting with entities of foreign countries of concern. That statute defines the term "foreign country of concern" to mean the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.[2]

That statute defines the term "controlling interest" to mean possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.[3]

Under s. 287.138, F.S., beginning January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to personal identifying information unless the entity provides the governmental entity with a signed affidavit. The affidavit must provide that the entity is not owned by the

[1] Section 287.138(1)(d), F.S., defines the term "governmental entity" for purposes of s. 287.138, F.S., 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, but not limited to, the Commission on Ethics, the Public Service Commission, 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.
[2] Section 287.138(1)(c), F.S.
[3] Section 287.138(1)(a), F.S.

government of a foreign country of concern, is not owned by a foreign country of concern, and is not organized under the laws of or is headquartered in a foreign country of concern.[4]

Beginning July 1, 2025, a governmental entity may not extend or renew a contract with a foreign country of concern entity if continuing such a contract would grant the entity access to personal identifying information. An entity extending or renewing a contract with a governmental entity must provide a sworn affidavit that the entity is not owned by the government of a foreign country of concern, is not owned by a foreign country of concern, and is not organized under the laws of or is headquartered in a foreign country of concern.[5]

Use of Cameras for Traffic Enforcement

Florida law expressly preempts to the state the regulation of the use of cameras for enforcing the Florida Uniform Traffic Control Law.[6] The only cameras currently authorized to enforce traffic laws are traffic infraction detectors (commonly known as red light cameras),[7] speed detection systems used to enforce school zone speed limits for violations in excess of 10 miles per hour over the speed limit,[8] and school bus infraction detection systems.[9]

The law authorizing speed detection systems is school zones, in its relevant parts:

- Requires a county or municipality to enact an ordinance in order to authorize the placement or installation of a speed detection system.[10] As part of its public hearing on the proposed ordinance, the county or municipality must consider traffic data or other evidence supporting the installation and operation of each proposed school zone speed detection system, and the county or municipality must determine that the school zone where a speed detection system is to be placed or installed constitutes a heightened safety risk that warrants additional enforcement measures.[11]
- Requires a county or municipality to annually report the results of all school zone speed detection systems within the county's or municipality's jurisdiction by placing a specified report as a single reporting item on the agenda of a regular or special meeting of the county's or municipality's governing body.[12] Before a county or municipality contracts or renews a contract to place or install a speed detection system in a school zone, the county or municipality must approve the contract or contract renewal at a regular or special meeting of the county's or municipality's governing body.[13]
    - Interested members of the public must be allowed to comment regarding the report, contract, or contract renewal under the county's or municipality's public comment

[4] Section 287.138(4)(a), F.S.
[5] Section 287.138(4)(b), F.S.
[6] Section 316.0076, F.S. Ch. 316, F.S., is the Florida Uniform Traffic Control Law.
[7] Section 316.0083, F.S., relating to the Mark Wandall Traffic Safety Program.
[8] Section 316.1896, F.S.
[9] Section 316.173, F.S.
[10] Section 316.008(9)(c), F.S. Section 316.003(83), F.S., defines the term “speed detection system” to mean a portable or fixed automated system used to detect a motor vehicle's speed using radar or LiDAR and to capture a photograph or video of the rear of a motor vehicle that exceeds the speed limit in force at the time of the violation.
[11] *Id*.
[12] Section 316.0776(3)(c), F.S.
[13] *Id*.

policies or formats, and the report, contract, or contract renewal may not be considered as part of a consent agenda.[14]

- The report must include a written summary, which must be read aloud at the regular or special meeting, and the summary must contain, for the same time period pertaining to the specified annual report to the Department of Highway Safety and Motor Vehicles (DHSMV), the number of notices of violation issued, the number that were contested, the number that were upheld, the number that were dismissed, the number that were issued as uniform traffic citations, and the number that were paid and how collected funds were distributed and in what amounts. The county or municipality must report to DHSMV that the county's or municipality's annual report was properly considered, including the date of the regular or special meeting at which the annual report was considered.[15]
- The compliance or sufficiency of compliance with this reporting requirement may not be raised in a proceeding challenging a violation of s. 316.1895, F.S., or s. 316.183, F.S., enforced by a speed detection system in a school zone.[16]

The statutes authorizing traffic infraction detectors,[17] in its relevant parts, includes the following:

- Each county or municipality that operates a traffic infraction detector must submit a report by October 1, 2012, and annually thereafter, to DHSMV which details the results of using the traffic infraction detector and the procedures for enforcement for the preceding state fiscal year.[18] The information submitted by the counties and municipalities must include statistical data and information required by DHSMV in order for DHSMV to complete the report that the DHSMV is required to compile.[19]
- On or before December 31, 2012, and annually thereafter, DHSMV must provide a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the use and operation of traffic infraction detectors, along with the DHSMV's recommendations and any necessary legislation.[20] The summary report must include a review of the information submitted to DHSMV by the counties and municipalities and must describe the enhancement of the traffic safety and enforcement programs.[21]

[14] Section 316.0776(3)(c)1., F.S.
[15] Section 316.0776(3)(c)2., F.S.
[16] Section 316.0776(3)(c)3., F.S
[17] Section 316.003(100), F.S., defines the term "traffic infraction detector" to mean a vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b), F.S., or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.
[18] Section 316.0083(4)(a), F.S.
[19] *Id*.
[20] Section 316.0083(4)(b), F.S.
[21] *Id*.

III. Effect of Proposed Changes:

Camera Systems – Contract Procurement

The bill provides that a contract awarded by a governmental entity outside this state or by a consortium or cooperative of governmental entities outside this state may not be used to procure contracts with manufacturers or vendors of school bus infraction detection systems[22], speed detection systems, traffic infraction detectors, or any other camera system used for enforcing Florida's Uniform Traffic Control Law. This provision applies to contracts entered into after July 1, 2025.

Prohibition on Contracting for Camera System Vendors of Foreign Countries of Concern

The bill defines the term "controlling interest" and "foreign country of concern" to have the same meaning as in s. 287.138(1), F.S.

The bill provides that on or after July 1, 2025, a governmental entity may not knowingly enter into or renew a contract with a contracting vendor of a school bus infraction detection system, speed detection system, traffic infraction detector, or any other camera system used to detect traffic violations if:

- The contracting vendor is owned by the government of a foreign country of concern; or
- The government of a foreign country of concern has a controlling interest in the contracting vendor.

Traffic Infraction Detectors - Transparency and Reporting

The bill requires a county or municipality that desires to have one or more traffic infraction detectors placed or installed after July 1, 2025, in an area where no traffic infraction detectors are currently placed or installed must enact an ordinance in order to authorize the placement, or installation of, or to authorize contracting with a vendor for the placement or installation of one or more red light cameras. As part of its public hearing on such proposed ordinance, the county or municipality must consider traffic data or other evidence supporting the installation and operation of each traffic infraction detector, and the county or municipality must determine that the intersection at which the traffic infraction detector is to be placed or installed constitutes a heighted safety risk that warrants additional enforcement measures.

The bill requires a county or municipality that operates one or more traffic infraction detectors to annually report the results of all traffic infraction detectors within the county's or municipality's jurisdiction by placing its annual report on red light cameras as a single reporting item on the agenda of a regular or special meeting of the county's or municipality's governing body. Before a county or municipality contracts or renews a contract to place or install one or more traffic infraction detectors, the county or municipality must approve the contract or contract renewal at a regular or special meeting of the county's or municipality's governing body.

[22] Section 316.003(78), F.S., defines the term "school bus infraction detection system" to mean a camera system affixed to a school bus with two or more camera sensors or computers that produce a recorded video and two or more film or digital photographic still images for the purpose of documenting a motor vehicle being used or operated in a manner that allegedly violates s. 316.172(1)(a) or (b), F.S.

At the meeting, interested members of the public must be allowed to comment regarding the report, contract, or contract renewal under the county's or municipality's public comment policies or formats, and the report, contract, or contract renewal may not be considered as part of a consent agenda.

The required report must include a written summary, which must be read aloud at the regular or special meeting, and the summary must contain, for the same time period pertaining to the annual report to DHSMV, the number of notices of violation issued, the number that were consisted, the number that were upheld, the number that were dismissed, the number that were issued as uniform traffic citations, and the number that were paid and how the collected funds were distributed and in what amounts. The county or municipality must report to DHSMV that the county's or municipality's annual report was considered in accordance with this provision, including the date of the regular or special meeting at which the annual report was considered.

The compliance or sufficiency of compliance with the provisions above may not be raised in a proceeding challenging a violation enforced by a traffic infraction detector.

A county or municipality that does not comply with the above, is suspended from operating traffic infraction detectors until it corrects such noncompliance.

The bill requires municipalities and counties to annually submit to DHSMV:

- The number of notices of violation issues, the number that were contested, the number that were upheld, the number that were dismissed, the number that were issued as uniform traffic citations, the number that were paid, and the number in each of the preceding categories for which the notice of violation was issued for a right-hand turn violation.
- A description of alternative safety countermeasures taken before and after the placement or installation of a red light camera.
- Statistical data and information required by DHSMV to complete its summary report.

The bill requires DHSMV to each report it receives regarding traffic infraction detectors submitted by a county or municipality on its website.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate, but likely insignificant, negative fiscal impact to the DHSMV to publish on its website each report on traffic infraction detectors submitted by a county or municipality.

The bill may have an indeterminate negative fiscal impact on counties and municipalities choosing to deploy traffic infraction detectors due to additional requirements and costs associated with the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:.

This bill substantially amends section 316.0083 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 316.0077 and 316.0078.

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 Fiscal Policy on February 27, 2024:
The committee substitute:

- Amends provisions relating to procurement of contracts with manufacturers or vendors of traffic enforcement camera systems.
- Provides a prohibition on contracting for traffic enforcement camera systems with vendors of foreign countries of concern.
- Amends the requirement that a county or municipality enact an ordinance to authorize placement or installation of red light cameras by applying this requirement only to a county or municipality that desires to install or place such cameras on or after July 1, 2025, in an area where no red light cameras are currently placed or installed.
- Makes technical and clarifying changes to the reporting requirements for red light cameras.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Calatayud) recommended the following:

Senate Amendment (with title amendment)

Delete lines 41 - 120

and insert:

316.0077 Camera systems; contract procurement.—A contract awarded by a governmental entity outside this state or by a consortium or cooperative of governmental entities outside this state may not be used to procure contracts with manufacturers or vendors of school bus infraction detection systems, speed detection systems, traffic infraction detectors, or any other

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camera systems used for enforcing this chapter. This section applies to contracts entered into on or after July 1, 2025.

Section 2. Section 316.0078, Florida Statutes, is created to read:

316.0078 Prohibition on contracting for camera systems of vendors of foreign countries of concern.—

(1) As used in this section, the terms "controlling interest" and "foreign country of concern" have the same meanings as in s. 287.138(1).

(2) On or after July 1, 2025, a governmental entity may not knowingly enter into or renew a contract with a contracting vendor of a school bus infraction detection system, speed detection system, traffic infraction detector, or any other camera system used for enforcing this chapter which is subject to s. 316.0076 if:

(a) The contracting vendor is owned by the government of a foreign country of concern; or

(b) The government of a foreign country of concern has a controlling interest in the contracting vendor.

Section 3. Subsection (4) of section 316.0083, Florida Statutes, is amended to read:

316.0083 Mark Wandall Traffic Safety Program; administration; report.—

(4)(a)1. A county or municipality that desires to have one or more traffic infraction detectors placed or installed on or after July 1, 2025, in an area where no traffic infraction detectors are currently placed or installed must enact an ordinance in order to authorize the placement or installation of, or to authorize contracting with a vendor for the placement

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or installation of, one or more traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. As part of the public hearing on such proposed ordinance, the county or municipality must consider traffic data or other evidence supporting the installation and operation of each traffic infraction detector, and the county or municipality must determine whether the intersection at which a traffic infraction detector is to be placed or installed constitutes a heightened safety risk that warrants additional enforcement measures.

2. A county or municipality that operates one or more traffic infraction detectors shall annually report the results of all traffic infraction detectors within the county's or municipality's jurisdiction by placing the annual report to the department required under paragraph (b) as a single reporting item on the agenda of a regular or special meeting of the county's or municipality's governing body. Before a county or municipality contracts or renews a contract to place or install one or more traffic infraction detectors, the county or municipality must approve the contract or contract renewal at a regular or special meeting of the county's or municipality's governing body.

a. Interested members of the public must be allowed to comment regarding the report, contract, or contract renewal under the county's or municipality's public comment policies or formats, and the report, contract, or contract renewal may not be considered as part of a consent agenda.

b. The report required under this subparagraph must include a written summary, which must be read aloud at the regular or special meeting, and the summary must contain, for the same time

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period pertaining to the annual report to the department required under paragraph (b), the number of notices of violation issued, the number that were contested, the number that were upheld, the number that were dismissed, the number that were issued as uniform traffic citations, and the number that were paid and how collected funds were distributed and in what amounts. The county or municipality shall report to the department that the county's or municipality's annual report was considered in accordance with this subparagraph, including the date of the regular or special meeting at which the annual report was considered.

3. The compliance or sufficiency of compliance with this paragraph may not be raised in a proceeding challenging a violation of s. 316.074(1) or s. 316.075(1)(c)1. enforced by a traffic infraction detector.

4. A county or municipality that does not comply with this paragraph is suspended from operating traffic infraction detectors under this subsection until such noncompliance is corrected.

(b) ~~(a)~~ Each county or municipality that operates a traffic infraction detector shall submit a report by October 1, 2012, and annually thereafter, to the department which details the results of using the traffic infraction detector and the procedures for enforcement for the preceding state fiscal year. The information submitted by the counties and municipalities must include:

1. The number of notices of violation issued, the number that were contested, the number that were upheld, the number that were dismissed, the number that were issued as uniform

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traffic citations, the number that were paid, and the number in each of the preceding categories for which the notice of violation was issued for a right-hand turn violation.

2. A description of alternative safety countermeasures taken before and after the placement or installation of a traffic infraction detector.

3. Statistical data and information required by the department to complete the summary report required under paragraph (c) ~~(b)~~.

The department must publish each report submitted by a county or municipality pursuant to this paragraph on its website.

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

And the title is amended as follows:

Delete lines 3 - 33

and insert:

316.0077, F.S.; prohibiting contracts awarded by certain entities outside this state from being used to procure contracts with manufacturers or vendors of camera systems used for traffic enforcement; providing applicability; creating s. 316.0078, F.S.; defining the terms "controlling interest" and "foreign country of concern"; prohibiting a governmental entity from knowingly entering into or renewing certain contracts for camera systems used for traffic enforcement; amending s. 316.0083, F.S.; requiring certain counties or municipalities to enact an ordinance to authorize placement or installation of traffic infraction



detectors; requiring the county or municipality to consider certain evidence and make a certain determination at a public hearing on such ordinance; requiring a county or municipality to annually report to the department the results of all traffic infraction detectors and place a specified annual report on the agenda of a regular or special meeting of its governing body; requiring approval by the governing body at a regular or special meeting before contracting or renewing a contract to place or install traffic infraction detectors; providing for public comment; prohibiting such report, contract, or contract renewal from being considered as part of a consent agenda; providing requirements for a written summary of such report; prohibiting compliance with certain provisions from being raised in a proceeding challenging a violation; providing for suspension of a noncompliant county or municipality from operating traffic infraction detectors until such noncompliance is corrected; providing requirements for reports submitted to the department by counties and municipalities regarding use of and enforcement by traffic infraction detectors; requiring the department

By Senator Calatayud

38-01666-24 20241464__

A bill to be entitled

An act relating to traffic enforcement; creating s. 316.0077, F.S.; providing that provisions exempting the purchase of commodities or contractual services from competitive bidding requirements do not apply to contracts for certain camera systems; creating s. 316.0078, F.S.; prohibiting certain camera systems or components thereof constructed by a Chinese manufacturer from being used for traffic enforcement in this state; amending s. 316.0083, F.S.; requiring a county or municipality to enact an ordinance to authorize placement or installation of traffic infraction detectors; requiring the county or municipality to consider certain evidence and make a certain determination at a public hearing; requiring a county or municipality to place a specified annual report on the agenda of a regular or special meeting of its governing body; requiring approval by the governing body at a regular or special meeting before contracting or renewing a contract to place or install traffic infraction detectors; providing for public comment; prohibiting such report, contract, or contract renewal from being considered as part of a consent agenda; providing requirements for a written summary of such report; requiring counties and municipalities to report to the department that their respective annual report was considered at a certain meeting and the date of such meeting; prohibiting compliance with certain provisions from being raised

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38-01666-24 20241464__

in a proceeding challenging a violation; providing for suspension of a noncompliant county or municipality from operating traffic infraction detectors until such noncompliance is corrected; requiring the department to publish certain reports on its website; providing an effective date.

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

Section 1. Section 316.0077, Florida Statutes, is created to read:

316.0077 Camera systems; competitive bidding.—The provisions of s. 287.057 which exempt the purchase of commodities or contractual services from competitive bidding requirements do not apply to contracts entered into with manufacturers or vendors of school bus infraction detection systems, speed detection systems, traffic infraction detectors, or any other camera systems used for enforcing this chapter which are regulated under s. 316.0076.

Section 2. Section 316.0078, Florida Statutes, is created to read:

316.0078 Use of camera systems constructed by Chinese manufacturers prohibited.—A school bus infraction detection system, speed detection system, traffic infraction detector, or any other camera system used for enforcing this chapter which is regulated under s. 316.0076, or any component thereof, which is constructed by a Chinese manufacturer or a domestic or international manufacturer that uses materials imported from China may not be used for traffic enforcement in this state.

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

Section 3. Subsection (4) of section 316.0083, Florida Statutes, is amended to read:

316.0083 Mark Wandall Traffic Safety Program; administration; report.—

(4)(a)1. A county or municipality shall enact an ordinance in order to authorize the placement or installation of, or to authorize contracting with a vendor for the placement or installation of, one or more traffic infraction detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. As part of the public hearing on such proposed ordinance, the county or municipality shall consider traffic data or other evidence supporting the installation and operation of each traffic infraction detector, and the county or municipality must determine that the intersection at which a traffic infraction detector is to be placed or installed constitutes a heightened safety risk that warrants additional enforcement measures.

2. A county or municipality that operates one or more traffic infraction detectors shall annually report the results of all traffic infraction detectors within the county's or municipality's jurisdiction as a single reporting item on the agenda of a regular or special meeting of the county's or municipality's governing body. Before a county or municipality contracts or renews a contract to place or install one or more traffic infraction detectors, the county or municipality shall approve the contract or contract renewal at a regular or special meeting of the county's or municipality's governing body.

a. Interested members of the public must be allowed to comment regarding the report, contract, or contract renewal under the county's or municipality's public comment policies or

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

formats, and the report, contract, or contract renewal may not be considered as part of a consent agenda.

b. The report required under this subparagraph must include a written summary, which must be read aloud at the regular or special meeting, and the summary must contain, for the preceding year, the number of notices of violation issued, the number that were contested, the number that were upheld, the number that were dismissed, the number that were issued as uniform traffic citations, and the number that were paid and how collected funds were distributed and in what amounts. The county or municipality shall report to the department that the county's or municipality's annual report was considered in accordance with this paragraph, including the date of the regular or special meeting at which the annual report was considered.

3. The compliance or sufficiency of compliance with this paragraph may not be raised in a proceeding challenging a violation of s. 316.074(1) or s. 316.075(1)(c)1. enforced by a traffic infraction detector.

4. A county or municipality that does not comply with this paragraph is suspended from operating traffic infraction detectors under this subsection until such noncompliance is corrected.

(b) ~~(a)~~ Each county or municipality that operates a traffic infraction detector shall submit a report by October 1, 2012, and annually thereafter, to the department which details the results of using the traffic infraction detector and the procedures for enforcement for the preceding state fiscal year. The information submitted by the counties and municipalities must include statistical data and information required by the

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department to complete the summary report required under paragraph (c) ~~(b)~~. The department must publish each report submitted by a county or municipality pursuant to this paragraph on its website.

(c)~~(b)~~ On or before December 31, 2012, and annually thereafter, the department shall provide a summary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the use and operation of traffic infraction detectors under this section, along with the department's recommendations and any necessary legislation. The summary report must include a review of the information submitted to the department by the counties and municipalities and must describe the enhancement of the traffic safety and enforcement programs.

Section 4. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2-27-24
Meeting Date

Fiscal
Committee

1464
Bill Number or Topic

Amendment Barcode (if applicable)

Name Natalie Kung

Phone 813 924-8218

Address 235 W Brandon Blvd #640
Street

Email

Brandon FL 33511
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Blue Line Solutions

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1486
INTRODUCER:	Appropriations Committee on Health and Human Services; Children, Families, and Elder Affairs Committee; and Senator Collins
SUBJECT:	Permanency for Children
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	**Fav/CS**
2.	Sneed	McKnight	AHS	**Fav/CS**
3.	Rao	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1486 makes numerous changes to chs. 39, 409, and 63, F.S., to reduce barriers in dependency proceedings, ensure the safety of children in out-of-home care, increase the time to permanency, and expand the financial opportunities to children in, or formerly in, the foster care system and adoptive parents. Specifically, the bill:

- Revises the process for background screening process for out-of-home placements.
- Creates a process to commit a child to the legal custody of the Department of Children and Families (DCF) to seek adoption for a child whose parents die while the child is in the dependency system or who otherwise does not have a legal guardian to care for the child and must rely on the DCF for services.
- Creates an emergency modification of placement process to address child safety of children in out-of-home care that is separate from a shelter hearing.
- Reduces the number of months required to close a case to permanent guardianship and allow a guardian to receive Guardianship Assistance Program (GAP) benefits from 6 to 3 months if the caregiver was previously named as a successor guardian and is known to the child.
- Reduces the child-age eligibility requirement for a guardian or adoptive parent to receive GAP payments or adoption assistance payments.
- Eliminates the requirement to personally serve a parent with a petition when the parent appears at a termination of parental rights hearing, aligning statute with the dependency hearing process.

- Shifts the judicial review of the DCF's decision on adoption applications made to the DCF under ch. 39, F.S., from a separate administrative process under ch. 120, F.S., to the judge assigned to the dependency processing who has the most familiarity with the child and family.
- Removes the requirement for Community-based care (CBC) lead agencies to provide adoption services and, instead, requires the DCF to contract with a child-placing agency to provide such services.
- Requires a court order with a written determination of reasonableness to approve or disapprove the itemized fees, costs, and expenses in the required affidavit that exceed current statutory caps.
- Requires private adoption entities to report certain information to the DCF quarterly for each finalized private adoption, including fees, costs, and expenses, and requires the DCF to make the data available on its website.
- Details what forms and mediums of advertisement for the current prohibition on specific persons or entities that can place an adoption advertisement and clarifies that only a Florida licensed adoption entity or attorney may place an adoption advertisement in the state.
- Expands those who may participate in the adoption benefits program to include certain healthcare practitioners and tax collector employees.
- Repeals the adoption incentive program that awarded incentive payments to CBCs.
- Expands independent living services for young adults aging out of foster care by decreasing the eligibility age for Postsecondary Education Services and Supports and allowing young adults to receive Aftercare if eligible for the extended GAP program or the extended adoption assistance program but is not participating in either program.

The bill has an indeterminate, yet likely significant negative fiscal impact on state government and the private sector. *See* Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2024, except as otherwise expressly provided in the bill.

II. Present Situation:

An estimated 3.9 million referrals of alleged child abuse and neglect were made nationwide in 2021.[1] Of that 3.9 million, approximately 2 million met the requirements for an investigation[2] leading to approximately 588,000 children with a finding of maltreatment.[3] More than 4.28 million children live in Florida, a vast majority of which, never come to the attention of Florida's child welfare system.[4] In 2021, the Department of Children and Families (DCF) investigated 256,060 reports of potential child abuse, and approximately 11 percent (or 27,394) of those investigations results in a finding of maltreatment.[5]

[1] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Report on Child Maltreatment 2021*, p. 8, available at: https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf (last visited Jan. 14, 2024).
[2] *Id.* at p. 13; referred to as "screened in referrals."
[3] *Id.* at 21; referred to as "victims of abuse and neglect."
[4] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Population Data for Florida, available at https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/florida.html (last visited Jan. 14, 2024).
[5] *Id.*

The United States Congress appropriates federal funds through various grants to the DCF to supplement state general revenue funds for the implementation of child welfare programs.[6] The DCF uses these funds to contract with local community non-profits to provide child welfare services.[7]

The DCF uses a centralized child welfare information system known as Florida Safe Families Network (FSFN) and is in the middle of a multi-year project to transition from old federal guidelines that required a Statewide Automated Child Welfare System (SACWIS) to new federal guidelines that require a Comprehensive Child Welfare Information System (CCWIS).[8] This transition will modernize and enhance the data capabilities of the DCF.

Florida's Child Welfare System

Chapter 39, F.S., creates Florida's dependency system charged with protecting children who have been abused, neglected, or abandoned. Florida's child welfare system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The DCF and CBCs work with those families to address the problems endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.[9]

Child welfare services are directed toward the prevention of child abuse, abandonment, and neglect.[10] The DCF practice model is based on the safety of the child within his or her home, using in-home services, such as parenting coaching and counseling to maintain and strengthen the child's natural supports in the home environment.[11] These services are coordinated by the DCF-contracted community-based care lead agencies (CBCs).[12] The DCF remains responsible for a number of child welfare services, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.[13] Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.[14]

[6] The main federal grant programs that supplement state-level child welfare programs are Titles IV-E and IV-B of the Social Security Act.
[7] Part V of Ch. 409, F.S.
[8] The Children's Bureau, CCWIS Status, available at https://www.acf.hhs.gov/cb/training-technical-assistance/ccwis-status (last visited Jan. 14, 2024)
[9] Chapter 39, F.S.
[10] Section 39.001(8), F.S.
[11] See generally: The Department of Children and Families, *Florida's Child Welfare Practice Model,* available at: https://www.myflfamilies.com/services/child-family/child-and-family-well-being/floridas-child-welfare-practice-model (last visited Jan. 14, 2024).
[12] Section 409.986(1), F.S.; See generally Department of Children and Families (DCF), About Community-Based Care, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last visited Jan. 14, 2024).
[13] Office of Program Policy Analysis and Government Accountability, Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care, Report 06-50, June 2006, available at https://oppaga.fl.gov/Products/ReportDetail?rn=06-50 (last visited Jan. 14, 2024).
[14] *Id.*

Department of Children and Families

The DCF's statutory mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.[15] The DCF must develop a strategic plan to fulfill this mission and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the DCF is accountable to taxpayers.[16]

The DCF is required to provide services relating to[17]:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.

The DCF must deliver services by contract through private providers to the extent allowed by law and funding.[18] These private providers include CBCs delivering child welfare services.[19]

Community-Based Care System

The DCF, through CBCs, administers a system of care[20] to children and families that is required to focus on:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had their children removed from their care;
- Safety for children who are separated from their families;
- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency, including providing adoption and postadoption services; and
- Transition to independence and self-sufficiency.[21]

The CBCs must give priority to services that are evidence-based and trauma informed.[22] The CBCs contract with a number of subcontractors for case management and direct care services to

[15] Section 20.19(1)(a), F.S.
[16] Section 20.19(1)(b), F.S.
[17] Section 20.19(4)(a), F.S.
[18] Section 20.19(1)(d), F.S.
[19] Part V of Ch. 409, F.S. and s. 394.9082, F.S.
[20] Section 409.986(1), F.S.; See generally The Department of Children and Families (The DCF), About Community-Based Care, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last visited Jan. 14, 2024).
[21] *Id.; Also see generally* s. 409.988, F.S.
[22] Section 409.988(3), F.S.

children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[23]

The Dependency System Process – Generally

When child welfare necessitates that the DCF remove a child from the home to ensure his or her safety, a series of dependency court proceedings must occur to place that child in an out-of-home placement, adjudicate the child dependent, and if necessary, terminate parental rights and free that child for adoption. Steps in the dependency process usually include:

- A report to the Florida Abuse Hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.
- Case planning for the parents to address the problems resulting in their child's dependency.
- Placement in out-of-home care, if necessary.
- Reunification with the child's parent or another option to establish permanency, such as adoption after termination of parental rights.[24]

Dependency Proceeding	Description of Process	Controlling Statute(s)
Removal	The DCF may remove a child from his or her home after a protective investigation determines that conditions in that child's home are unsafe and a safety plan cannot make the conditions safe.	s. 39.401, F.S.
Shelter Hearing	The court must hold a shelter hearing within 24 hours after removal. At this hearing, the judge determines whether there was probable cause to remove the child and whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	The DCF must file a petition for dependency within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	The court must hold an arraignment and shelter review within 28 days of the shelter hearing. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any previous shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	The court must hold an adjudicatory trial within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.

[23] The DCF, Lead Agency Information, available at https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited Jan. 14, 2024).
[24] The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, F.S.

Dependency Proceeding	Description of Process	Controlling Statute(s)
Disposition Hearing	The court must hold a disposition hearing within 15 days of arraignment (if the parents admits or consents to adjudication) or 30 days of adjudication if a court finds the child dependent. At this hearing, the judge reviews the case plan and placement of the child and orders the case plan and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Change of Custody Hearing	The court may change the temporary out-of-home placement of a child at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement at least every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	If the DCF determines that reunification is no longer a viable goal and termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	The court must hold an advisory hearing as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	The court must hold an adjudicatory trial within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Central Abuse Hotline

The DCF is required to operate and maintain a central abuse hotline (hotline)[25] to receive reports of known or suspected instances of child abuse,[26] abandonment,[27] or neglect,[28] or instances when

[25] Hereinafter cited as "hotline". "Florida Abuse Hotline" means the DCF's central abuse reporting intake assessment center, which receives and processes reports of known or suspected child abuse, neglect or abandonment 24 hours a day, seven days a week. Chapter 65C-30.001, F.A.C.

[26] Section 39.01(2), F.S., defines "abuse" as any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.

[27] Section 39.01(1), F.S., defines "abandoned" or "abandonment" as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. "Establish or maintain a substantial and positive relationship" means, in part, frequent and regular contact with the child, and the exercise of parental rights and responsibilities.

[28] Section 39.01(50), F.S., states "neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly

a child does not have a parent, legal custodian or adult relative available to provide supervision and care.[29] The hotline must operate 24 hours a day, 7 days a week, and accept reports in writing via fax, web-based reporting,[30] web-based chat, or a single statewide toll-free telephone number.[31]

If the hotline determines a report meets the statutory criteria for child abuse, abandonment, or neglect, a child protective investigation must be completed by a DCF child protective investigator (CPI).[32] The CPI must either implement a safety plan for the child, which allows the child to remain in the home with in-home services or take the child into custody. If the child cannot safely remain in the home with a safety plan, the DCF must file a shelter petition and remove the child from his or her current home and temporarily places them in out-of-home care.[33]

Hotline reports and child welfare records are confidential.[34] However, the law requires the DCF to release records to "any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect."[35] Current law does not detail or specify whom must make the determination that the death was the result of abuse, abandonment, or neglect or when that determination must occur. This lack of specificity has caused issues with the DCF being unaware of "determinations" made by other entities and being unknowingly liable for the release of records.[36]

In-Home Services

The DCF is required to make all efforts to keep children with their families and provide interventions that allow children to remain safely in their own homes.[37] CPIs and CBC case

impaired, except when such circumstances are caused primarily by financial inability unless services have been offered and rejected by such person.

[29] Section 39.201(4), F.S.

[30] Section 39.201(2)(j), F.S., requires the DCF to update the web-based reporting form to include fields for specified information and allow a reporter to save and return to a report at a later time.

[31] Section 39.201(4) and (5), F.S.

[32] Section 39.201 (4), F.S. Hereinafter cited as "CPI." The DCF recruits qualified professional staff to serve as child protective investors. Preference is given to individuals who have baccalaureate and master's degrees in social work, psychology, sociology, counseling, special education, education, human development, child development, family development, marriage and family therapy, nursing, or individuals with a combination of relevant work and volunteer experience that demonstrate a commitment to helping children and families. All CPIs are required to complete training on the recognition of and responses to head trauma and brain injury in a child under 6 years of age developed by the Child Protection Team Program within the Department of Health, and training that is either focused on serving a specific population, including, but not limited, to, medically fragile children, sexually exploited children, children under 3 years of age, or families with a history of domestic violence, mental illness, or substance abuse, or focused on performing certain aspects of child protection practice, including, but not limited to, investigation techniques and analysis of family dynamics. Section 402.402, F.S. See also: s. 39.01, F.S. defines "Protective investigator" as an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.

[33] Section 39.201, F.S.

[34] Section 39.202(1), F.S.

[35] Section 39.202(2)(o), F.S.

[36] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 3-4, (on file with the Senate Committee on Children, Families, and Elder Affairs).

[37] Sections 39.402(7), 39.521(1)(f), and 39.701(d), F.S.

managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes.

As of September 30, 2023, a total of 8,136 children were receiving in-home services.[38]

Out-of-Home Placements

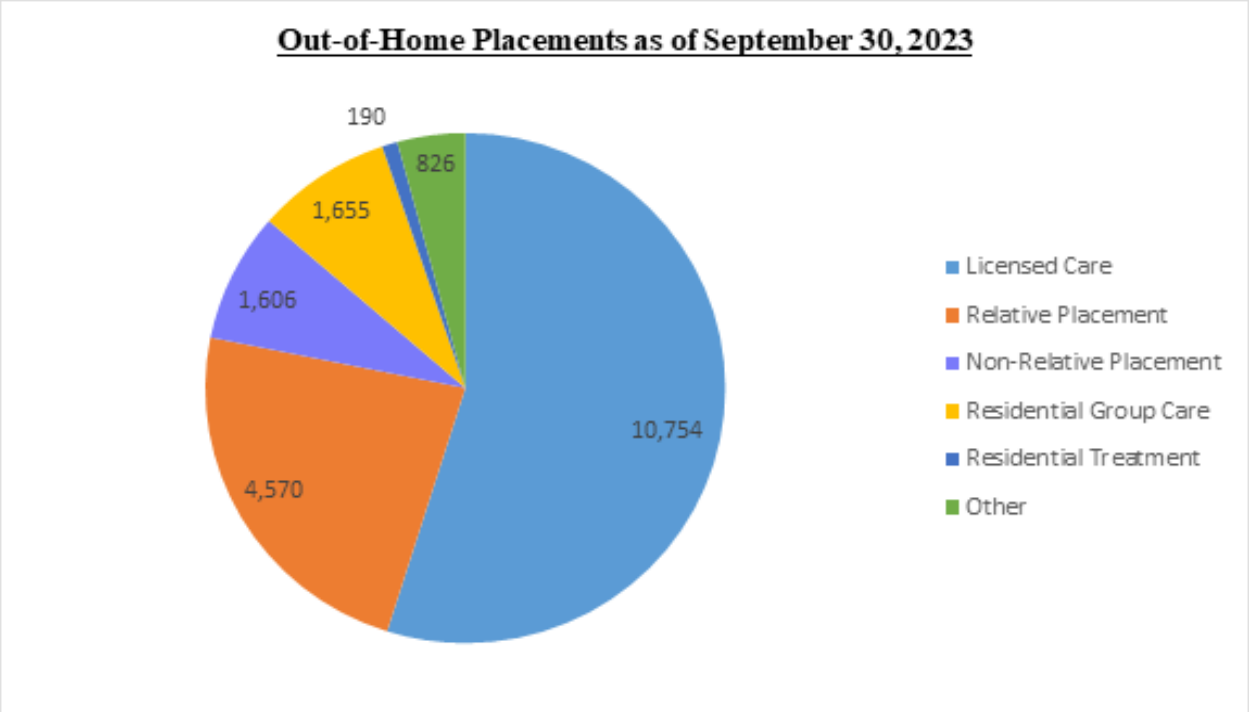
When a CPI determines that in-home services are not enough to ensure a child's safety, the CPI removes the child from the home and places him or her in a safe and appropriate temporary out-of-home placement, which can include placement with:

- a non-offending parent;
- relative caregiver;
- adoptive parent of the child's sibling;
- fictive kin who has a close existing relationship to the child;
- nonrelative caregiver that does not have an existing relationship with the child; or
- licensed foster care, group care or residential care.[39]

Out-of-home placements provide housing, support, and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.[40]

Children in out-of-home care should be placed in the least restrictive, most family-like environment in close proximity to parents.[41] CBCs are responsible for placing children in the most appropriate available setting after conducting an assessment using child-specific factors.[42] The following chart demonstrates the number of children in out-of-home care in the state as of September 30, 2023.

[38] The Department of Children and Families, Child Welfare Key Indicators Monthly Report October 2023, available at: https://www.myflfamilies.com/KIDS/ROA/child-welfare-key-indicators-reports (last visited Jan. 14, 2024).
[39] Section 39.4021, F.S.
[40] The Office of Program Policy and Government Accountability, Program Summary, available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053 (last visited Jan. 14, 2024).
[41] Sections 39.001(1) and 39.4021(1), F.S.
[42] Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.



Source: Department of Children and Families, Child Welfare Key Indicators Monthly Report, October 2023, p. 31

Background Screening Requirements for Out-of-Home Placements

Statute requires the DCF to conduct local and criminal history records on all persons being considered as a placement option, including all "household members" 12 years of age and older[43] A criminal history records check may include, but is not limited to, submission of fingerprints to the Florida Department of Law Enforcement (FDLE) for processing and forwarding to the Federal Bureau of Investigation (FBI) for state and national criminal history information, and a local criminal records checks through local law enforcement agencies for all household members 18 years of age and older and other visitors to the home.

The DCF uses the FBI's criminal history record databases to complete criminal history records checks[44] State statutes must comply with federal law and rules to allow a state agency to access the FBI's criminal history information. Section 39.0138, F.S., was previously approved and the FBI's Criminal Justice Information Law Unit (CJILU) authorized the DCF to conduct finger-based background checks of any person being considered for placement of dependent children. However, in 2020, changes were made to s. 39.0138, F.S., which prompted a review by the CJLIU.

[43] Section 39.0138, F.S.
[44] Pub. L. 92-544 provides the authority for the DCF to utilize the FBI's criminal history record databases.

The review found the definition of "visitor" to be too broad and timeframes and processes for the background check were not explicitly stated.[45] For DCF to continue using the FBI system Florida statute must come into compliance with federal standards.[46]

In state fiscal year 2022-23 the DCF utilized the FBI's system to:

- Complete 33,380 screenings for placement of children and adoptions, of which 929 were denied.
- Conduct 7,527 screenings for emergency placement, of which 7,373 were approved and 154 were disqualified.

Emergency Postdisposition Change of Placements

Section 39.522, F.S., details the process for a dependency court to grant changes of placement for children who are in the dependency system. The law allows a petition to be brought before the court alleging the need for the change of placement of child who is placed by the DCF under protective supervision. If any party[47] to the child's case or the current caregiver denies the need for the change, the court must hear from all parties through an evidentiary hearing. Upon the admission of a need for a change or after such hearing and finding of a need for change of placement, the court must enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for postdisposition change of placement is the best interests of the child.[48]

When determining whether a change of legal custody or placement is in the best interests of the child, the court must consider 15 best interest factors,[49] and any report filed by the

[45] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[46] *Id*.
[47] "Party" is defined as the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child. S. 39.01, F.S.
[48] Section 39.01375, F.S.
[49] Section 39.01375, F.S. lists 15 factors the court must consider when determining whether a proposed placement change is in a child's best interest: The child's age; the physical, mental, and emotional health benefits to the child by remaining in his or her current placement or moving to the proposed placement; the stability and longevity of the child's current placement; the established bonded relationship between the child and the current or proposed caregiver; the reasonable preference of the child, if the child is of a sufficient age and capacity to express a preference; the recommendation of the child's current caregiver, if applicable; the recommendation of the child's guardian ad litem, if one has been appointed; the child's previous and current relationship with a sibling and if the change of legal or physical custody or placement will separate or reunite siblings, evaluated in accordance with s. 39.4024, F.S.; the likelihood of the child attaining permanency in the current or proposed placement; the likelihood the child will be required to change schools or child care placement, the impact of such change on the child, and the parties' recommendations as to the timing of the change, including an education transition plan required under s. 39.4023, F.S.; the child's receipt of medical, behavioral health, dental, or other treatment services in the current placement; the availability of such services and the degree to which they meet the child's needs; and whether the child will be able to continue to receive services from the same providers and the relative importance of such continuity of care; the allegations of any abuse, abandonment, or neglect, including sexual abuse and human trafficking history, which caused the child to be placed in out-of-home care and any history of additional allegations of abuse, abandonment, or neglect; the likely impact on activities that are important to the child and the ability of the child to continue such activities in the

multidisciplinary team. The court must also consider the priority of placements established in law when deciding what placement is in the child's best interest.[50]

Importantly, s. 39.522(2), F.S., does not provide for an emergency hearing when a child's placement must be immediately modified. Because there is no emergency process for modification of placement, when a child is at risk of abuse, abandonment, or neglect in his or her current placement, the DCF has been exercising its shelter power to protect the child.[51] This requires the court to conduct a shelter hearing for the child already under the DCF's supervision. This leads to confusion as to whether the standard to be used to move the child is probable cause to shelter or the best interest of the child to modify placement.[52]

During Fiscal Year 2022-23, dependency courts granted a postdisposition change of placement for 6,672 children in the dependency system.[53]

Termination of Parental Rights

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.[54] The DCF, the guardian ad litem assigned to the child's case, or any other person knowledgeable of the facts of the case is permitted to file a petition for the termination of parental rights with the court.[55]

During the dependency phase of a dependency case, the personal appearance of any person in a hearing before the court obviates the necessity of serving process on that person.[56] However, there is no similar provision during the termination of parental rights phase of the case.[57] Because of this, when a case has entered the termination of parental rights phase, even if a parent arrives at a hearing, the DCF must personally serve that parent and the hearing must be reset to a later date. When hearings are conducted remotely, the DCF is not able to personally serve the parent during the hearing; therefore, the hearing cannot be re-held until service by a formal process server is completed.[58] This can result in delays in the termination of parental rights process and permanency for children.

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proposed placement; the likely impact on the child's access to education, Medicaid, and independent living benefits if moved to the proposed placement; and any other relevant factor.

[50] Section 39.4021(2)(a), F.S. lists the priority of placements that must be considered, as follows: 1. Non-offending parent; 2. Relative caregiver; 3. Adoptive parent of the child's sibling, when the DCF or CBC is aware of such sibling; 4. Fictive kin with a close existing relationship with the child; 5. Nonrelative caregiver that does not have an existing relationship with the child; 6. Licensed foster care; 7. Group or congregate care.

[51] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 6, (on file with the Senate Committee on Children, Families, and Elder Affairs).

[52] *Id.*

[53] *Id.*

[54] Section 39.811, F.S.

[55] Section 39.802, F.S.

[56] Section 39.502(2), F.S.

[57] *See generally*, Part X of Ch. 39, F.S.

[58] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 4-6, (on file with the Senate Committee on Children, Families, and Elder Affairs).

Permanency

Florida law requires a permanency hearing no later than 12 months after the child was removed from his or her home or within 30 days after a court determines that reasonable efforts to return the child to either parent are not required, whichever occurs first.[59] The purpose of the permanency hearing is for the court to determine when the child will achieve permanency or whether modifying the permanency goal is in the child's best interest.[60] A permanency hearing must be held at least every 12 months for any child who continues to be supervised by the DCF.[61]

The permanency goals under Florida law[62], listed in order of preference are:
- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship under s. 39.6221, F.S.;
- Permanent placement with a fit and willing relative under s. 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.

Adoptions

Child Welfare Adoptions and Adoption Decision Review Process

The Florida Adoptions Act, codified in ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities[63]:
- The DCF under Chapter 39, F.S.;
- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state that is licensed by the DCF to place children in Florida.

Ultimately, if the court is unable to reunify a child to his or her home due to safety concerns, the child welfare system may seek a permanent home for that child through the adoption process.[64] Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be legally the child of the adoptive parents and entitled to all rights and privileges and subject to all obligations of a child born to the adoptive parents.[65] Adoption is one of the legally recognized child welfare permanency goals that may be ordered by a court for a child within the child welfare system.[66]

[59] Section 39.621 (1), F.S.
[60] *Id.*
[61] *Id.*
[62] Section 39.621, F.S.
[63] Ch. 63, F.S.
[64] Section 39.811(2), F.S.; See generally Parts VIII and X of Ch. 39, F.S.
[65] Section 39.01 (5), F.S.
[66] Section 39.01(59), F.S., defines "permanency goal" to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time as another permanency goal is pursued. See also Section 39.621(3), F.S.

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her current parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.[67] The DCF may place the child with a licensed child-placing agency, a registered child-caring agency, or a family home for prospective adoption if given custody of a child that has been made available for a subsequent adoption under ch. 39, F.S.[68]

The DCF's ability to place a child in its custody for adoption and the court's review of that placement is controlled by s. 39.812, F.S. The DCF may place a child in a home and the DCF's consent alone, in all cases, is sufficient. The dependency court retains jurisdiction over any child placed in the custody of the DCF until the child is adopted. After custody of a child for subsequent adoption has been given to the DCF, the court has jurisdiction for reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction the court may review the appropriateness of the adoptive placement upon good cause shown by the Guardian ad Litem for the child.

Adoption Decision Review Process

When a child is available for adoption, the DCF, through its contractors, receives applications to adopt the child.[69] Some applicants are denied because their adoption home study is denied based on criminal history.[70] When there are two or more families with approved home studies, the DCF sends these conflicting applications through the adoption applicant review committee (AARC) for resolution.[71] The decision of the AARC is then reviewed and the DCF issues its consent to one applicant while communicating its denial to the other applicants through certified letter.[72]

Unsuccessful applicants are able to seek review of the DCF action through the administrative hearing process under ch. 120, F.S. Designated hearing officers at the DCF hear these reviews. The assignment of adoption decision disputes to the ch. 120, F.S., process did not originate with, nor was it authorized by, legislative directive. This process arose due to the opinion in Department of Children & Family Services v. I.B. and D.B.[73] Notwithstanding this opinion, the Legislature's overall intent in relation to permanency and the resolution of disputes in the dependency case is to proceed under ch. 39, F.S. Furthermore, the ch. 120, F.S., process precludes the selected applicant from participating, which is statutorily permissible in the dependency court proceeding.[74]

Florida law also permits denied adoption applicants to initiate legal action under ch. 63, F.S., by filing a petition for adoption.[75] Upon filing the petition, the petitioner must demonstrate that the

[67] Section 39.811(9), F.S.
[68] Section 39.812(1), F.S.; See generally Parts VIII and X of Ch. 39, F.S.
[69] Rule 65C-16.004, F.A.C.
[70] Rule 65C-16.007, F.A.C
[71] Rule 65C-16.005(9), F.A.C.
[72] *Id.*
[73] See generally 891 So. 2d 1168 (Fla. 1st DCA 2005).
[74] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 6, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[75] Section 63.042(2), F.S.

DCF has unreasonably withheld its consent to the adoption.[76] Because ch. 63, F.S., permits anyone who meets the requirements of s. 63.042(2), F.S., to adopt and any petitioner may argue the DCF's consent to the adoption should be waived because it was unreasonably withheld, multiple parties may file a petition to adopt the same child.[77]

There can be up to four proceedings simultaneously addressing the permanency or adoption of a single child using the same child-specific facts:

- Chapter 39, F.S., dependency proceeding;
- Chapter 63, F.S., adoption proceeding filed by the family who has the DCF's consent;
- Chapter 63, F.S., adoption proceeding filed by the applicant whose application was denied; and
- Chapter 120, F.S., proceeding to dispute the adoption decision by the DCF.

The chart below includes the number of 120 adoption denial cases the DCF commenced and concluded each year and the number of cases that resulted in a different decision than the AARC recommendation and the number of DCA appeals and the decisions.[78]

Year	Chapter 120 Cases	AARC Decisions Overturned (by 120 Decision)	DCA Appeals	DCA Decisions Overturning Agency Decision
2019	58	0	2	0
2020	46	0	4	0
2021	42	1	2	0
2022	41	1	1	0
2023	41	1	1	0

This current process delays adoption. Between 2021 and 2022, the average length of time between the receipt of a chapter 120 hearing request and entry of a final order was 161 days[79]. This does not include any additional delays caused by appeals to the District Court which adds, on average, an additional 323 days.[80]

Adoption Costs

Private Adoptions

Under ch. 63, F.S., only adoption entities can complete adoption activities in Florida. Adoption entities include the DCF, a child-caring agency registered under the Florida Association of Christian Child Caring Agencies (FACCCA), a Florida licensed-attorney, and a child-placing

[76] Section 63.062(7), F.S.
[77] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 8-10, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[78] *Id*.
[79] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 3-4, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[80] *Id*.

agency licensed by the DCF.[81] There are currently 64 private adoption agencies licensed by the DCF; one private adoption agency registered under FACCCA, and over 100,000 attorneys licensed by the Florida Bar.[82]

Current law allows adoption entities to assess fees, costs, and expenses for private adoptions, or they pay for the fees and services on behalf of the adoptive parents.[83] Private adoption services and fees vary, but it is estimated the total amount of fees and services paid by prospective adoptive parents can range from $30,000 to $60,000.[84] Section 63.097, F.S., allows private adoption entities may charge prospective adoptive families for:

- Reasonable living expenses of the birth mother when the birth mother is unable to pay due to unemployment, underemployment, or disability.
- Reasonable and necessary medical expenses.
- Court filing expenses, court costs, and other litigation expenses.
- Birth certificate and medical record expenses.
- Costs associated with adverting.
- Professional fees.
- Expenses necessary to comply with the requires of ch. 63, F.S., including, but not limited to, service of process, investigator fees, a diligent search, a preliminary home study, and a final home investigation.

Adoption entities seeking to charge fees, costs, or expenses for other items than those listed above require court approval prior to payment and a finding that the costs are based on a finding of extraordinary circumstances.[85]

Additionally, the court must approve the total amount of fees charged to prospective adoptive parents when an adoption entity charges more than the following:

- $5,000 in legal or other fees;
- $800 in court costs; or
- $5,000 in reasonable and necessary living and medical expenses.[86]

In order to lessen the economic burden of private adoptions, adoptive parents may file for a federal adoption tax credit for qualifying adoption expenses[87] based on the adoptive parent's income. The 2023 federal adoption tax credit is approximately $16,000.[88]

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[81] Section 63.302, F.S.
[82] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 8-10, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[83] Section 63.097, F.S.
[84] Child Welfare Information Gateway, *Planning for Adoption: Knowing the Costs and Resources,* available at: https://www.childwelfare.gov/resources/planning-adoption-knowing-costs-and-resources/ (last visited Jan. 14, 2024).
[85] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 10, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[86] Section 63.097, F.S.
[87] Qualifying adoption expenses include adoption fees, attorney fees, court costs, travel expenses (including meals and lodging while away from the home), and re-adoption expenses relating to adoption of a foreign child.
[88] *Supra* note 85.

Adoption from the Child Welfare System

State Adoption Benefits

Section 409.166, F.S., creates the adoption assistance program to provide financial assistance to adoptive parents who adopt a child from the foster care system.[89] Such assistance may include, but is not limited to, a monthly subsidy, medical assistance, Medicaid assistance, and reimbursement of nonrecurring expenses associated with the legal adoption.[90]

Individuals who adopt a child from the child welfare system are eligible to receive $5,000 annually, paid on a monthly basis, for the support and maintenance of the child until the child's 18th birthday.[91] In the event the child was adopted after the age of 16, s. 409.166(4)(d), F.S., allows for the adoptive family to remain eligible for the adoption assistance payment until the child reaches 21 years of age, if the young adult is participating in specific programs or activities.[92]

Beginning in 2000, Florida's Department of Management Services could administer adoption benefits to any state employee or water management district employee who adopted from the child welfare system.[93] The DCF overtook the administration of the adoption benefits program in 2007.[94] In 2010, the program was repealed, and funding ended.[95] However, in 2015, the Legislature reestablished the adoption benefit program to provide a one-time benefit to qualifying employees who adopt a child from the foster care system.[96]

The following table includes information on the expansion of persons eligible for the adoption benefit program over time:

Year	Employees Eligible for the Adoption Benefit under s. 409.1664, F.S.
2015	Full-time or part-time employee of a state agency who is paid from regular salary appropriations rather than a temporary employee. The term includes instructional personnel who are employed by the Florida School for the Deaf and Blind.[97]

[89] Section 409.166, F.S.
[90] *Id*.
[91] Section 409.166(4)(c), F.S. The adoptive parents can receive an amount other than $5,000 upon agreement by the DCF and memorialized in a written agreement between the adoptive parents and the DCF. The agreement must take into consideration the circumstances of the adoptive parents and the needs of the child being adopted. The amount of subsidy may be adjusted upon changes in the needs of the child or circumstances of the adoptive parents. In no case shall the amount of the monthly payment exceed the foster care maintenance payment that would have been paid during the same period if the child had been in a foster family home.
[92] This program is known as the Extended Maintenance Adoption Subsidy (EMAS). The payments may be made to the adoptive parents until the child reaches 21 if the child is: completing secondary education or a program leading to an equivalent credential; enrolled in an institution that provides postsecondary or vocational education; participating in a program or activity designated to promote or eliminate barriers to employment; employed for at least 80 hours per month; or unable to participate in the following programs or activities full time due to a physical, an intellectual, an emotional, or psychiatric conditions that limits participation.
[93] Chapter 2000-241, Laws of Fla.
[94] Chapter 2010-158, Laws of Fla.
[95] Chapter 2015-130, Laws of Fla.
[96] *Id*.
[97] *Id*.

2017	Full-time or part-time employees of charter schools or the Florida Virtual School to the list of eligible employees.[98]
2020	Full-time or part-time employee from a state agency, charter school, or Florida Virtual School that is **not** an independent contractor. Other personal services employees who have been continuously employed full-time or part-time by a state agency for at least 1 year. Veterans and servicemembers that are domiciled in the state.[99]
2022	Law enforcement officers.[100]

Qualifying adoptive employees, veterans, or servicemembers who adopt a child from the child welfare system, who is "difficult to place"[101], is eligible to receive a one-time monetary benefit of $10,000 per child, while law enforcement offices is eligible to $25,000 per child.[102] If the child being adopted is not considered "difficult to place," a qualifying adoptive employee, veteran, or servicemember is eligible to receive $5,000 per child, while a law enforcement officer is eligible to receive $10,000 per child.[103]

The following table identifies the number of adoption subsidies that were requested from the total number DCF adoptions.[104]

Fiscal Year	DCF Adoptions	Adoption Subsidies Requested	% with Subsidies
2019-20	4,548	275	6%
2020-21	3,904	263	7%
2021-22	3,888	323	8%
2022-23	3,602	412	11%

Statewide Adoption Services

Various adoption services may be provided at the time a child is permanently committed to DCF's custody for subsequent adoption. To facilitate adoption, CBCs, or its subcontractors, are

[98] Chapter 2017-140, Laws of Fla.
[99] Chapter 2020-22, Laws of Fla.
[100] Chapter 2022-23, Laws of Fla.
[101] Section 409.166(2), F.S., defines "difficult to place" as a child whose (1) permanent custody has been awarded to the DCF or to a licensed child-placing agency; (2) has established significant emotional ties with his or her foster parents or is not likely to be adopted because he or she meet a specific category (eight years of age; developmentally disabled; physically or emotionally handicapped; a member of a racial group that is disproportionately represented among children available for adoption or a member of sibling group of any age provided two or more members of a sibling group remain together for purposes of adoption); and (3) for whom a reasonable but unsuccessful effort has been made to place the child without providing a benefit.
[102] Section 409.1664, F.S.
[103] Section 409.1664, F.S.
[104] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 15, (on file with the Senate Committee on Children, Families, and Elder Affairs).

required to recruit prospective adoptive families; annually assess adoptive parent resource needs; complete initial and final adoptive home studies; comply with adoption disclosure requirement; and implement and administer adoption assistance benefits.[105]

Additionally, CBCs, or its subcontractors, are required to inform prospective adoptive parents of the available adoption benefits.[106]

In Florida, the average length of time from a child being sheltered to termination of parental rights is 18 months.[107] The average length of time from termination of parental rights to finalizing adoption is 12 months.[108] This means the average length of time from shelter to a finalized adoption is 2.5 years.[109] In June 2023, there were 4,700 children legally free for adoption of which 3,300 were matched or placed with prospective adoptive parents.[110]

To help eliminate barriers to timely adoption and permanency, the DCF and various stakeholders, including the Guardian ad Litem program, CBCs, case management organizations, and the judiciary identified the following barriers to finalizing adoptions[111]:

- Multiple background screenings of prospective adoptive parents due to expiration;
- Adoption application packets were not uniform statewide and could range from 60-70 pages based on the CBC;
- Adoption home studies were not completed timely and compiling data for the child specific information for the home studies caused delays.

Based on these barriers to finalizing adoptions, in July 2023, the DCF launched a pilot in Circuits 6 and 13 to expedite adoptions, which included streamlining adoption procedures, clarifying requirements, meeting with stakeholders to address barriers, and bringing in dedicated case management staff to focus on finalizing adoptions.[112] Circuits 6 and 13 were selected for the pilot due to both having the highest statewide pending adoption rates and both recently experiencing a turnover of its CBC.[113]

During the pilot, the DCF identified additional barriers in the adoption process due to unnecessary adoption practices, including:

- CBCs requesting documents from case managers that were not required by administrative rule or statute.
- Lengthy enhanced subsidy approval processes caused delays.
- Adoption specialists were assigned only after parental rights were terminated instead of after the petition for the termination of parental rights was filed.

[105] R. 65C-16.004, F.A.C
[106] 65C-16.012 F.A.C.
[107] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11-12, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[113] *Id.*

Since the implementation of the Pilot, the total number of adoptions increased, and the total number of children in care decreased.[114] The tables below compare the first quarter of the Pilot to the same quarter during the year prior to the Pilot's implementation.[115]

Circuit 6 – Family Support Services of Suncoast (CBC)			
Category	**FY 2022-23**	**FY 2023-24**	**% Change**
Total Adoptions	62	100	61%
Average Number of Children in Out-of-Home Care	2, 532	1,999	-21%

Circuit 13 – Children's Network of Hillsborough (CBC)			
Category	**FY 2022-23**	**FY 2023-24**	**% Change**
Total Adoptions	30	71	137%
Average Number of Children in Out-of-Home Care	2,433	2,143	-12%

Statewide Adoption Exchange

The DCF currently contracts with a third-party vendor to operate the Adoption Exchange (exchange) under s. 409.167, F.S. The purpose of the exchange is to serve all authorized licensed child-placing agencies as a means of recruiting adoptive families for children who are eligible for adoption and who have been permanently placed with the DCF or a licensed child-placing agency. The exchange is required by law to post a description of the child along with a photograph and any other relevant information.[116]

The law was implemented in 1983, long before the internet was a viable option for the display of this information.[117] In subsequent updates to the law in 1994, 1997, and 2014, the language has not been updated to take into account the unique privacy concerns the internet creates.[118] The exchange currently operates as a website open to the general public with profiles and photos of children eligible for adoption open and searchable to the general public.[119]

Adoption of Orphaned Children

Currently, when both parents of a child are deceased with no family member to serve as legal guardian or custodian through a probate or guardianship proceeding, the DCF can adjudicate a

[114] *Id.*
[115] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[116] Section 409.167(2), F.S.
[117] Chapter 1983-246, Laws of Fla.
[118] Chapters 1994-164, 1997-101, and 2014-19, Laws of Fla.
[119] The DCF, *Explore Adoption*, available at: http://www.adoptflorida.org/ (last visited 1/16/24).

child dependent. However, there is no legal mechanism to permanently commit a child to the custody of the DCF for subsequent adoption.[120]

In *F.L.M. v. Department of Children and Families*,[121] the court held that when the parents of a child have died they have not abandoned the child because the definition of ”abandonment” in ch. 39, F.S., contemplates the failure to provide a minor child with support and supervision while being able, and the parents who died are no longer able. Instead, the courts have held that an orphaned child without a legal custodian can be adjudicated dependent based on the child having no parent or legal custodian capable of providing supervision and care pursuant to s. 39.01(14)(e), F.S.[122] As such, the DCF relies upon this maltreatment to adjudicate orphaned children dependent.[123]

Section 39.811(2), F.S., allows a court to commit a child to DCF’s custody for subsequent adoption if the court finds by clear and convincing evidence that the grounds for termination of parental rights are established. Section 39.806(1), F.S., outlines various grounds for termination of parental rights. However, all available grounds require that a parent engage in behavior that puts a child at risk. This prevents the DCF from seeking termination of a deceased parent’s parental rights based on available grounds because a deceased parent has not engaged in behavior that puts a child at risk. Furthermore, even if there were a statutory ground to seek the termination of a deceased parent’s rights, there are benefits that a child may be receiving, such as social security benefits or an inheritance, and termination of the deceased parent’s rights would disrupt those benefits.[124]

Currently, courts are permanently committing children to DCF"s custody without meeting the requirements of s. 39.811(2), F.S., which requires termination of parental rights by clear and convincing evidence that the grounds for termination of parental rights are established.[125]

Florida’s Independent Living Services

The DCF strives to achieve permanency for all children in care before their 18th birthday.[126] However, a child will age out of care upon reaching 18 years of age if a permanent placement is not found.[127] From October 1, 2022, to September 30, 2023, there were 801 young adults who aged out of Florida’s foster care system.[128]

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[120] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 4, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[121] 912 So. 2d 1264 (Fla. 4th DCA 2005)
[122] *Supra* note 120.
[123] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 4-6, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[124] *Id.*
[125] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 11, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[126] Section 39.01, F.S. Section 39.621, F.S., lists the permanency goals in order of preference as 1. reunification; 2. adoption, if a petition for termination of parental rights has been or will be filed; 3. permanent guardianship; 4. permanent placement with a fit and willing relative; or 5. placement in another planned permanent living arrangement.
[127] Rule 65C-30.022, F.A.C.
[128] Florida Department of Children and Families, *Office of Child and Family Well-Being Dashboard*, available at: https://www.myflfamilies.com/ocfw-dashboard (last visited Jan. 12, 2024).

Florida provides independent living services to young adults to help them transition out of foster care and to prepare them to become self-sufficient adults. Florida's independent living services include extended foster care (EFC), which applies to young adults who were in licensed foster care upon turning 18 years of age.[129] Florida also offers two other independent living programs: Postsecondary Education Services and Support (PESS) and Aftercare services (Aftercare). The following tables provides information on the eligibility requirements to participate in Florida's independent living programs and the services provided by each.

Program	Eligibility	Services
Extended Foster Care (EFC)[130]	Young adults who turned 18 in foster care and are: • Completing high school or its equivalent; ***or*** • Enrolled in college or vocational schooling; ***or*** • Working at least 80 hours per month. To stay in EFC, the young adult must: • Meet with a case manager every month. • Continue to participate in a required activity. • Attend court reviews every six months.	Young adults may choose to remain in licensed foster care and receive foster care services until the age of 21 (22 with a disability).
Postsecondary Education Services and Support (PESS)[131]	1. Young adults who turned 18 in foster care and spent at least 6 months in licensed out-of-home care before turning 18. 2. Young adults who are at least 18 and were adopted from foster care **after age 16** or were placed with a court-approved guardian after sending at least 6 months in licensed foster care within the 12 months immediately preceding such adoption or placement; ***and*** • Have earned a high school diploma or equivalent; ***and*** • Are attending a college or vocational school that is Florida Bright Futures eligible.	$1,720 per month for: • Housing • Utilities • Living expenses Available until the age 23.
Aftercare[132]	Young adults who turned 18 while in licensed foster care, but are not yet 23, and • Are not in EFC; ***or*** • Are not in PESS.	Mentoring Tutoring Substance abuse treatment Counseling Job and career skills training Temporary financial assistance for necessities

[129] Chapter 2013-178, Laws of Florida
[130] Section 39.6251, F.S.
[131] Section 409.1451(2), F.S.
[132] Section 409.1451(3), F.S.

III. Effect of Proposed Changes:

Background Screenings (Sections 1 and 2)

Section 1 amends s. 39.01, F.S., to add the definition of "visitor" to ch. 39, F.S., to require individuals that fall under the definition to complete a background screening when a child is being considered for an out-of-home placement. The bill defines "visitor" as a person who:

- Provides care or supervision to children in the home; or
- Is 12 years of age or older, other than a child in care, who will be in the child's home at least five consecutive days or seven or more days in a month.

This change (along with the changes in section 2) will make Florida statutes compliant with federal requirements and allow the Department of Children and Families (DCF) to continue to use the Federal Bureau of Investigation's (FBI) federal database to conduct and complete required background screenings for out-of-home placements.[133]

Section 2 amends s. 39.0138, F.S. to require the DCF to conduct a criminal history records check on all visitors to a home being considered for an out-of-home placement.

The bill also amends the process for conducting and completing a background check by:

- Requiring the DCF to complete a name-based check of federal criminal history records if a child has been sheltered and must be placed in out-of-home care, such as an emergency placement in the home of private individuals including neighbors, friends, or relatives, due to an emergency.
- Requiring fingerprints of the out-of-home placement applicant and all other adult members of the applicant's household to be submitted to the Florida Department of Law Enforcement (FDLE) within seven calendar days after receipt of the results of the name-based check, unless an individual is exempted from fingerprinting requirements.
- Requiring the FDLE to forward the fingerprints to the FBI for review within 15 calendar days after the FDLE received the fingerprints.

The bill prohibits the DCF from placing a child in an out-of-home placement if the:

- Applicant or any household members are disqualified as a result of the name-based check; or
- Fingerprints are not submitted timely to the FBI.

The bill requires the DCF to seek a court order to immediately remove a child from that placement if an applicant or any other adult household member does not submit the required fingerprints to the FDLE within 15 calendar days after the name-based check is conducted, provided that such persons are not exempt from a criminal history records check.

The bill also changes the name of the child welfare systems of record used by the DCF from the State Automated Child Welfare System (SACWIS) to the Comprehensive Child Welfare Information System (CCWIS) to reflect the transition to new federal guidelines.

[133] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 3, (on file with the Senate Committee on Children, Families, and Elder Affairs).

These change (along with the changes in section 1) will make Florida laws compliant with federal requirements and allow the DCF to continue to use the FBI's federal database to conduct and complete required background screenings for out-of-home placements.

Adoption of Orphaned Children (Section 3)

Section 3 creates s. 39.5035, F.S. to allow a court to permanently commit a child whose parents are deceased to DCF's custody. This change allows a child to find permanency when there's no legal custodian available to care the child after the death of his or her parents and to allow the child to continue to receive death benefits without terminating the deceased parent's parental rights.

The bill allows an attorney for the DCF, or any person with knowledge of the facts, to file a petition for adjudication and permanent commitment if both parents of a child are deceased and there has been no appointment of a legal custodian or guardian through probate or a guardianship proceeding.

If the child has not been adjudicated dependent, the bill requires the filing of the petition adjudication and permanent commitment within 21 days after the shelter hearing. If the child has been adjudicated dependent, the bill requires the filing of a petition for permanent commitment within a reasonable time after the petitioner first becomes aware of the facts that support the petitions.

The bill requires the petition for adjudication and permanent commitment to be in writing and contain the following:

- Identification of the deceased parent or parents;
- Facts that establish both parents of the child;
- Facts that establish that a legal custodian or guardian has not been appointed for the child; and
- Be signed by the petitioner under oath stating the filing of the petition is in good faith.

The bill requires the court to conduct an adjudicatory hearing as soon as practicable, but no later than 30 days after the filing of a petition. Notice of the date, time, and place of the adjudicatory hearing and a copy of the petition must be served on:

- Any person with physical custody of the child.
- A living relative of each parent of the child, unless one cannot be found after a diligent search or inquiry.
- The guardian ad litem for the child or a representative of the guardian ad litem program, if applicable.

The bill requires adjudicatory hearings to be conducted by a judge without a jury and by applying the rules of evidence in use in civil cases. The bill requires the court to determine by clear and convincing evidence that both parents of the child are deceased, or that the last known living parent is deceased, and the other parent cannot be found after diligent search or inquiry, and that a legal custodian or guardian has not been appointed for the child. The bill allows a certified copy of a death certificate to be sufficient evidence of proof of a parent's death.

The bill requires the court to make one of the following determines within 30 days after the adjudicatory hearing on a petition for the adjudication and permanent commitment of the child:

- If the court finds the petitioner has met the clear and convincing standard: the bill requires the court to enter a written order adjudicating the child dependent and permanently committing the child to DCF's custody for subsequent adoption. The court must schedule a disposition hearing no later than 30 days after the entry of the order, where the DCF must provide the court with a case plan for the child. The bill requires the DCF to make reasonable efforts to place the child in a timely manner and finalize the permanent placement of the child. The court must hold hearings every 6 months to review the progress of the child's case plan permanency goal, until the child reaches 18 years of age, or the adoption of the child is finalized.
- If the court finds the petitioner has not met the clear and convincing standard, but that a preponderance of the evidence establishes that the child does not have a parent of legal custodian capable of providing supervision of care: the bill requires the court to enter a written order adjudicating the child dependent. A disposition hearing must be scheduled no later than 30 days after the entry of the order.
- If the court finds the petitioner has not met the clear and convincing standard and that a preponderance of the evidence does not establish that the child does not have a parent or legal custodian capable of providing supervision of care: the bill requires the court to enter a written order dismissing the petition.

The bill requires the court to make one of the following determinations within 30 days after the adjudicatory hearing on a petition for the permanent commitment of the child:

- If the court finds the petitioner has met the clear and convincing standard: the bill requires the court to enter a written order permanently committing the child to DCF custody for the purposes of adoption. The court must schedule a disposition hearing no later than 30 days after the entry of the order, where the DCF must provide the court with a case plan that identifies the permanency goal for the child. The bill requires the DCF to make reasonable efforts to place the child and finalize the permanent placement. The court must hold hearings every 6 months to review the progress of the child's case plan permanency goal, until the child reaches 18 years of age, or the adoption of the child is finalized.
- If the court finds that clear and convincing evidence does not establish that both parents of the child are deceased or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry: the bill requires the court to enter a written order denying the petition.

Emergency Postdisposition Change of Placement (Sections 4 and 5)

Section 4 amends s. 39.521, F.S., to make conforming changes that reflect the shift to utilizing the CCWIS System, rather than the SACWIS System when conducting records checks when a child will be remaining with an adult approved by the court.

Section 5 amends s. 39.522, F.S., to create process for emergency modification of a child's court-ordered placement. The bill allows a child's case manager, authorized DCF agent, or law enforcement officer to remove a child from a placement if the current caregiver requests

immediate removal of the child or if the circumstances meet the criteria of a shelter according to s. 39.401(1)(b), F.S.[134]

The bill requires that, if at the time of removal, the child was not placed in foster care, the DCF to file a motion to modify placement within one business day of the child being taken into custody. Unless all parties and the caregiver agree to the change of placement, the court must set a hearing within 24 hours after the filing of the motion to modify placement to determine whether the DCF has established probable cause that reasonable grounds exist for the immediate removal of the child. The court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral or written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing.

- If the court finds probable cause has not been established to support the removal of the child: the bill requires the court to order the return of the child to his or her current placement. This finding by the court does not preclude a subsequent motion.
- If the current caregiver admits to a need for a change of placement or probable cause is established: the bill requires the court to enter an order changing the child's placement. If the child is not placed in licensed foster care, the new placement must meet the required home study criteria of ch.39, F.S.
- If the child's placement is modified based on a probable cause finding: the bill requires the court to conduct postdisposition hearings under s. 39.522(2) and (3), F.S., unless waived by all parties.

Permanent Guardianship and Guardianship Assistance Program (Section 6 and 7)

Section 6 amends s. 39.6221, F.S., to allow the court to close a case to permanent guardianship if the child was placed with a relative or other approved adult for the preceding three months and that person was named on the child's guardianship assistance agreement. This change allows children to achieve permanency with a guardian that has already been vetted through the background screening requirements of the Guardianship Assistance Agreement, without having to unnecessarily return to the child welfare system.

Section 7 amends s. 39.6225, F.S., to expand the eligibility of guardianship assistance payments by reducing the age requirement a child must be for a guardian to receive payments. The bill only allows a guardian who entered into a guardianship assistance agreement when a child was 14 to receive guardianship assistance payments, rather than when the child was 16 years of age. This increases the eligible population by 782 individuals, with an expected 235 of those choosing to participate in the program.[135]

[134] Pursuant to s. 39.401(1)(b), F.S., there must be probable cause that supports that the child has been: (1) abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment; (2) the parent or legal custodian has materially violated a condition of placement imposed by the court; or (3) that the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision or care.
[135] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 8, (on file with the Senate Committee on Children, Families, and Elder Affairs).

Judicial Notice in Termination of Parental Rights Cases

Section 8 amends s. 39.801(3), F.S., to mirror language relating to the dependency phase of the case that allows for personal appearance at a termination advisory hearing, or any subsequent hearing, to remove the need for personal services.

This language will enable a trial court to conduct an advisory hearing if a parent has personally appeared regardless of whether the parent was personally served with the petition, eliminating continuances and delays, and reducing time to permanency for children.

Child Welfare Adoptions and Adoption Decision Review Process (Sections 9 and 12)

Section 9 amends s. 39.812(4), F.S., to change the jurisdiction for reviewing the DCF's denial of an application to adopt a child from a ch. 120, F.S., administrative hearing to the dependency court. The DCF's decision to deny an adoption applicant will now be reviewable only under s. 39.812, F.S., and is not subject to ch. 120, F.S.

The bill requires the DCF to file the denial with the court and provide copies to the parties within 10 business days after the decision. The bill allows the denied applicant to file a motion to review the denial within 30 days of the issuance of the written notification of denial. The motion must allege the DCF unreasonably withheld its consent and request that the court allow the denied applicant to file a petition to adopt the child under ch. 63, F.S., without the DCF's consent. The denied applicant is given limited standing in the ch. 39, F.S., proceeding to file the motion and to present evidence in support of the motion. Such standing terminates upon the entry of the court's order. The bill maintains the standard of review for these cases that is applicable in the ch. 120, F.S., administrative proceedings.

The bill requires the court to hold a hearing within 30 business days after the filing of the motion. The court may only consider whether the DCF's review of the application was consistent with the agency's policies and made in an expeditious manner using an abuse of discretion review. If the DCF selected another applicant to adopt the child, the selected applicant may participate in the hearing and may be granted leave by the court to be heard without filing a motion to intervene.

The bill requires the court to enter a written order within 15 business days after the hearing that either denies the motion to review or finds the DCF unreasonably withheld its consent. If the court finds the DCF unreasonably withheld consent, the bill requires the court to authorize the denied applicant to file a petition to adopt the child without the DCF's consent.

The bill amends s. 39.812(5), F.S., to allow the DCF to remove a child from a foster home or court-ordered custodian whose adoption application was denied by the DCF, and the court denied review of DCF's denial.

The bill amends s. 39.812(6), F.S., to require the DCF to attach a copy of the consent for adoption to the petition to adopt.

Section 12 amends s. 63.062, F.S., to reflect the changes to the Chapter 120 hearing changes in Section 9 of the bill. The bill establishes that if parental rights to the minor have been terminated and the minor has been permanently committed to the DCF for subsequent adoption, the DCF must provide consent to the adoption, or the petitioner must include the court order finding the DCF unreasonably withheld consent as well as a favorable preliminary adoptive home study in the petition to adopt. This change ensures there is only one adoption petition filed for each child.[136]

Statewide Adoption Services (Sections 13, 9, 10, 11, 18, 20, and 21)

The bill makes changes throughout chs. 63 and 409, F.S., to centralize statewide adoption services by removing the requirement that community-based lead agencies (CBCs) provide adoption services and supports.

Section 13 amends s. 63.093, F.S., to require the DCF to contract with one or more licensed child-placing agencies to provide adoptive services, complete the adoption processes for children permanently committed to the DCF, and to support adoptive families, beginning July 1, 2025. The bill allows a contracted licensed child-placing agency to subcontract for the provision of adoptive services.

The bill requires the contracted licensed child-placing agency, rather than a CBC, to:

- Respond to an initial inquiry from a prospective adoptive parent within seven business days after receipt of the inquiry to inform the prospective adoptive parent of the adoption process and requirements for adopting a child from the child welfare system.
- Refer a prospective adoptive parent interested in adopting a child in the DCF's custody to a DCF-approved adoptive parent training program.
- Complete an adoptive home study of a prospective adoptive parent that includes observation, screening, and evaluation of the child and the prospective adoptive parent. The bill allows the home study to serve as the adoptive home study if the child was placed in the home prior to the termination of parental rights.
- Complete a preparation process, as established by DCF rule, with the prospective adoptive parent.
- Approve or deny the home study within 14 business days after receipt of the recommendation of approval of the prospective adoptive parent's appropriateness to adopt.

The bill requires the DCF to adopt rules that eliminate duplicative practices and delays in the adoption home study process for active service members seeking to adopt in Florida, including, but not limited to, giving credit for adoption classes that have been taken in another state that substantially comply with s. 409.175(14)(b), F.S.

The bill also requires the DCF to annually report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of adoptions in Florida by November 15.

[136] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 9-10, (on file with the Senate Committee on Children, Families, and Elder Affairs).

Section 9 amends s. 39.812, F.S., to conform to the more centralized adoption structure.

Section 10 amends the definition of "agency" in s. 63.032(12), F.S., to " child-placing agency" to mean an agency licensed by the DCF pursuant to s. 63.202, F.S., to place minors for adoption. This change in definition to conform to other changes made in the bill.

Section 11 amends s. 63.039, F.S., to require a licensed adoption entity to quarterly report to the DCF all private adoptions that were finalized in the preceding quarter. The bill requires that the report provide the age, race, ethnicity, sex, county of birth, and county of adoptive families for private adoptions, and have this information available as aggregate data on the DCF website.

Section 19 repeals s. 409.1662, F.S., that requires the DCF to create an adoption incentive program that awards incentive payments to CBCs for specific adoption performance standards.

Section 21 amends s. 409.167, F.S., to require the statewide adoption exchange to be in accordance with the rules adopted by the DCF.

The bill changes the requirements of the statewide adoption exchange photo-listing component that includes descriptions and photographs of children legally freed for adoption. The bill requires the statewide adoption exchange photo-listing component to be inaccessible to the public unless the individuals have completed or are in the process of completing an adoption home study. The bill permits licensed child-placing agencies to utilize the photo listing component of the statewide adoption exchange for the purposes of family-matching, provided only individuals who have completed, or are in the process of completing, an adoption home study have access.

Section 22 amends s. 409.988, F.S., to remove the requirement of CBCs to serve children who were adopted from the child welfare system and families that require postadoption services.

This section has an effective date of July 1, 2025.

Adoption Costs and Adoption Benefits (Sections 14, 15, 16, 18, and 20)

Section 14 amends s. 63.097, F.S. to include preliminary home studies and final home investigations as a preplacement and postplacement social service within the list of fees the DCF must approve within the process of licensing an adoption agency.

The bill requires the courts to issue an order that approves or disapproves the fees if the total amount of fees exceeds:
- $5,000 in legal or other professional fees;
- $800 in court costs; or
- $5,000 in reasonable and necessary living and medical expenses.

The bill prohibits the payment of any fees, costs, or expenses other than those of the adoption entity and requires that such costs be supported by a receipt.

The bill requires that beginning January 1, 2025, adoption entities must report quarterly to the DCF on finalized private adoptions including specific demographic information about the adopted child and adoptive family and specific fees, costs, and expenses approved by the court for each adoption. The DCF must publish this anonymized aggregate information on its website quarterly.

Section 15 amends s. 63.132, F.S., to require a written order by a court approving or disapproving the fees, costs, and expenses itemized in the affidavit filed by the prospective adoptive parents and the adoption entity. A court order approving fees, costs, or expenses that exceed statutory limits must include a written determination of reasonableness.

Section 16 amends s. 63.212, F.S., to clarify what forms and mediums of advertisement apply to the current prohibition on persons or entities that can place an adoption advertisement and clarifies that only a Florida licensed adoption entity or attorney may place an adoption advertisement in the state.

Section 18 amends s. 409.166(4), F.S., to expand the eligibility for adoption assistance by reducing the age requirement a child must be for an adoptive parent to receive payments. The bill allows an adoptive parent who entered into an initial adoption assistance agreement when a child was 14 years of age to receive adoption assistance payments, rather than when the child was 16 years of age. The DCF estimates this will increase the eligible population by 550 individuals, with 165 participating in the program.[137]

Section 20 amends s. 409.1664, F.S., to make health care practitioners[138] as listed in s. 456.001(4), F.S., who hold an active status license from the Department of Health (DOH) and whose individual income does not exceed $150,000, and tax collector employees who are an employee of an office of county tax collector in the state, to be eligible to receive adoption benefits when adopting a child from the child welfare system. The bill increases the amount of the adoption benefit from $10,000 to $25,000 when the child being adopted meets the definition of "difficult to place" and from $5,000 to $10,000 when the child being adopted does not meet the definition.

The bill allows a health care practitioner or tax collector employee to apply for the adoption benefit if he or she is domiciled in Florida and adopts a child in the child welfare system on or after July 1, 2024. The bill requires a health care practitioner to apply to the DOH to obtain the benefit, and a tax collector employee to apply through the DCF. The bill does not preclude a health care practitioner or tax collector employee from qualifying for or receiving another type of adoption assistance.

[137] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 8, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[138] Section 456.001(4) defines health care practitioner as any person licensed under chapters 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, part I, part II, part III, part V, part X, part XII, part XIV of chapter 468, 478, 480, part I, part II, and part III of chapter 483, 484, 486, 490, or 491.

Independent Living Services (Section 16)

Section 17 amends s. 409.1451(2), F.S. to increase the number of young adults eligible to receive PESS by allowing a young adult who was at least 14 years of age (rather than 16 years of age) to receive services, provided other eligibility requirements are met. The DCF estimates this will make an additional 351 young adults eligible to receive PESS services, with an estimated 71 choosing to participate in the program.[139]

The bill also amends eligibility for Aftercare services available to young adults. The bill allows a young adult who is eligible or extended guardianship assistance payments or extended adoption assistance, but is not participating in either program, to be eligible for Aftercare services if he or she meets the other requirements.

The bill takes effect July 1, 2024, except as otherwise expressly provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[139] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), p. 8, (on file with the Senate Committee on Children, Families, and Elder Affairs).

B. Private Sector Impact:

Community-Based Care Lead Agencies (CBCs)
There is an indeterminate, but likely insignificant fiscal impact on CBCs due to the removal of the requirements that CBCs provide adoptive and post-adoptive services. The CBCs will no longer receive funding to provide these services.

Child-Placing Agencies
There is an indeterminate, but likely insignificant fiscal impact on child-placing agencies. The bill requires the Department of Children and Families (DCF) to contract with licensed child-placing agencies to provide adoptive and post-adoptive services. Contract-licensed child-placing agencies will be able to receive funding to provide these services.

C. Government Sector Impact:

Expansion of Independent Living Services
The DCF anticipates new recurring expenditures to fund the expansion of independent living services, as follows:[140]

Service Expanded	Increased Fiscal
Extended Post-18 Adoption and Guardianship Assistance Payments	$3,216,000
Postsecondary Education Services and Support (PESS)	$1,465,440
Aftercare Services	$3,428,700
Total	**$8,110,140**

Expansion of the Adoption Benefits Program
The DCF anticipates additional adoption benefit monetary payments resulting from the inclusion of tax collector employees and certain health care practitioners as eligible recipients and the increase in the lump sum monetary payments for all eligible employees. The DCF estimates the annual recurring cost to be $9,822,530.[141]

Adoption Review Hearings Conducted by Dependency Courts
There is an indeterminate, but likely insignificant negative fiscal impact on the court system due to adoption review hearings being done by the dependency court, rather than an administrative hearing pursuant to ch. 120, F.S. The DCF may also experience a workload reduction due to the streamlining of the adoption review hearing process.

VI. Technical Deficiencies:

None.

[140] The Department of Children and Families, *SB 1486 Agency Bill Analysis* (January 2024), pp. 18-19, (on file with the Senate Committee on Children, Families, and Elder Affairs).
[141] The Department of Children and Families, *SB 1486 Agency Bill Analysis*, p. 19 (on file with the Senate Committee on Children, Families, and Elder Affairs).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.0138, 39.521, 39.522, 39.6221, 39.6225, 39.801, 39.812, 63.032, 63.039, 63.062, 63.093, 63.097, 63.132, 63.212, 409.1451, 409.166, 409.1664, 409.167 and 409.988.

This bill creates section 39.5035 of the Florida Statutes.

This bill repeals section 409.1662 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 Appropriations Committee on Health and Human Services on February 20, 2024:
The committee substitute makes the following changes:

- Requires a court order with a written determination of reasonableness to approve or disapprove the fees, costs, and expenses itemized in the required affidavit of expenses and receipts that exceed current statutory caps.
- Requires a quarterly report to the Department of Children and Families (DCF) by adoption entities detailing finalized private adoptions to include specific demographic information of the adopted child and adoptive family and specific financial information related to fees, costs, and expenses approved by the court. The DCF must publish on its website this anonymized aggregate information.
- Details what forms and mediums of advertisement for the current prohibition on specific persons or entities that can place an adoption advertisement and clarifies that only a Florida licensed adoption entity or attorney may place an adoption advertisement in the state.

CS by Children, Families, and Elder Affairs on January 23, 2024:
The CS makes the following changes:

- Lowers the age of who falls under the definition of "visitor" for the purpose of background screening requirements from 14 years of age to 12 years of age.
- Requires the DCF to conduct a criminal history records check on all visitors in a home considered for placement.
- Requires that the DCF submit fingerprints to the FDLE within seven "calendar" days after receipt of results of a name-based check rather than seven days.
- Requires the FDLE to forward fingerprints to the FBI within 15 calendar days after conducting the name-based check.
- Requires the DCF to seek a court order for immediate a removal of a child if fingerprints are not provided within 15 calendar days after the FDLE conducted a

name-back check and such person was not exempted from a criminal history records check.

- Requires the court to enter a written order within 15 "business" days after a hearing that considers whether the DCF unreasonably withheld it consent for adoption.
- Changes the definition of "agency" in Ch. 63, F.S., (adoption statutes) to "child-placing agency" to mean an agency licensed by the DCF pursuant to s. 63.202 to place minors for adoption.
- Adds tax collector employees as eligible for adoption benefits when adopting a child from the child welfare system and requires tax collector employees to apply to the DCF to obtain an adoption benefit.
- Requires the adoption exchange, which provides information on children in DCF's custody available for adoption, to be in accordance with rules adopted by the DCF.
- Prohibits the photo-listing component of the adoption exchange from being accessible by the public and only accessible to persons who have completed or are in the process of completing an adoption home study.
- Requires the photo-listing component of the adoption exchange to facility family-matching between children and prospective adoptive parents and requires the DCF to consult with any child 12 years of age or older during the development of his or her description on the statewide adoption exchange, and allows a child 12 years of age or older to request a specific photo for his or her adoption exchange photo listing.
- Removes the requirement that child abuse records in the case of a child's death be available only upon the DCF's closure of its investigation.
- Creates a new section of law that requires a licensed adoption entity to report all private adoptions to the DCF on a quarterly basis, with specified information. The amendment permits DCF to adopt rules to implement this section and requires the DCF to make the aggregate information available on its website.
- Requires the DCF to adopt rules that regulate the fees charged by adoption agencies, and requires adoption agencies to report the number of adoptions in which a court enters an order that approves fees that exceed current statutory limits.
- Requires a court order, rather than simple court approval, when fees that adoption entities assess exceed the current statutory limits.
- Requires an affidavit seeking fees above current statutory limits be per se unreasonable and denied absent a written finding with competent and substantial evidence of reasonableness resulting from extraordinary circumstances.

B. Amendments:

None.

By the Appropriations Committee on Health and Human Services; the Committee on Children, Families, and Elder Affairs; and Senator Collins

603-03530-24 20241486c2

A bill to be entitled

An act relating to permanency for children; amending s. 39.01, F.S.; defining the term "visitor"; amending s. 39.0138, F.S.; renaming the "State Automated Child Welfare Information System" as the "Comprehensive Child Welfare Information System"; requiring the Department of Children and Families to conduct a criminal history records check of certain persons; defining the term "emergency placement"; requiring certain persons to submit their fingerprints to the department or specified entities; requiring the department or entities to submit such fingerprints to the Department of Law Enforcement for state processing within a specified timeframe; requiring the Department of Law Enforcement to forward such fingerprints to the Federal Bureau of Investigation within a specified timeframe; requiring that a child be immediately removed from a home if certain persons fail to provide their fingerprints and are not otherwise exempt from a criminal history records check; creating s. 39.5035, F.S.; authorizing specified persons to initiate a proceeding if both parents of a child are deceased or the last known living parent is deceased and a legal custodian has not been appointed for the child through a probate or guardianship proceeding; providing requirements for filing a petition for adjudication and permanent commitment of a child if the child has been placed in shelter by order of the court and has not been adjudicated; authorizing an attorney to file

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a petition for adjudication and permanent commitment within a reasonable time after the petitioner becomes aware of certain facts; providing requirements for the petition; requiring the clerk of court to set the case before the court for an adjudicatory hearing within a specified timeframe; providing that notice of the adjudicatory hearing and a copy of the petition be served on specified persons; providing for adjudicator hearings; amending s. 39.521, F.S.; conforming provisions to changes made by the act; amending s. 39.522, F.S.; authorizing certain persons to remove a child from a court-ordered placement under certain circumstances; requiring the Department of Children and Families to file a specified motion, and the court to set a hearing, within specified timeframes under certain circumstances; requiring a certain determination by the court to support immediate removal of a child; authorizing the court to base its determination on certain evidence; requiring the court to enter certain orders and conduct certain hearings under certain circumstances; amending s. 39.6221, F.S.; revising a requisite condition for placing a child in a permanent guardianship; amending s. 39.6225, F.S.; revising eligibility for payments under the Guardianship Assistance Program; amending s. 39.801, F.S.; providing that service of process is not necessary under certain circumstances; amending s. 39.812, F.S.; authorizing the court to review the department's denial of an application to adopt a

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child; providing requirements for the reviewability of the department's decision to deny an application to adopt a child; requiring the department to file written notification of its denial with the court and provide copies to certain persons within a specified timeframe; authorizing a denied applicant to file a motion to review such denial within a specified timeframe; providing requirements for the motion to review; providing requirements for a denied applicant's standing; requiring the court to hold a hearing within a specified timeframe; providing requirements for the hearing; providing for a standard of review; authorizing certain persons to participate in the hearing under certain circumstances; requiring the court to enter an order within a specified timeframe; revising exceptions that authorize the department to remove a child from his or her foster home or custodian; requiring the department or its contracted child-placing agency to conduct certain postadoption duties; conforming provisions to changes made by the act; amending s. 63.032, F.S.; revising a definition; amending s. 63.039, F.S; requiring licensed adoption entities to report specified information relating to private adoptions to the department on a quarterly basis; authorizing the department to adopt rules; requiring the department to make certain information available in a specified form on its website; amending s. 63.062, F.S.; requiring the department take certain action if the minor has

been permanently committed to the department for subsequent adoption; amending s. 63.093, F.S.; requiring the department to contract with one or more child-placing agencies to provide certain adoption services beginning on a specified date; authorizing the department to authorize such agency to subcontract with other entities to provide certain duties; requiring that an adoptive home study be updated every 12 months after the date on which the first study was approved; authorizing the updated placement or licensed home study to serve as the adoption home study if a child was placed before the termination of parental rights; requiring the department to adopt certain rules; requiring the department to submit an annual report to the Governor and Legislature by a specified date; conforming provisions to changes made by the act; amending s. 63.097, F.S.; making technical changes; requiring the court to issue a certain order when the total of certain amounts exceeds those specified; revising the prohibition of a specified fee; requiring an adoption entity to report specified information for each finalized adoption to the department on a quarterly basis beginning on a specified date; requiring the adoption entity to redact certain information concerning the child's biological parents and the child's adoptive parents; requiring the department to report on its website certain information, including the actual fees, costs, and expenses of finalized adoptions, on a quarterly

basis; providing construction; requiring the department to adopt rules; amending s. 63.132, F.S.; requiring that a court order approving fees, costs, or expenses that exceed a certain amount include a certain determination; making a technical change; amending s. 63.212, F.S.; providing applicability for the prohibition against the advertisement of the adoption of a minor child except by certain persons; requiring a person who publishes a newspaper, magazine, billboard, or any other written advertisement distributed in this state to include a statement that only specified licensed adoption entities may legally provide adoption services; conforming provisions to changes made by the act; amending s. 409.1451, F.S.; revising the age requirements for receiving postsecondary education services and support; revising requirements for receiving aftercare services; amending s. 409.166, F.S.; revising age requirements for receiving adoption assistance; repealing s. 409.1662, F.S., relating to children within the child welfare system and the adoption incentive program; amending s. 409.1664, F.S.; defining terms; providing certain adoption benefits to health care practitioners, tax collector employees, and law enforcement officers; specifying requirements for such persons to apply for such benefits; increasing the amount of monetary adoption benefits certain persons are eligible to receive; conforming provisions to changes made by the act;

amending s. 409.167, F.S.; revising requirements for the statewide adoption exchange and its photo listing component; authorizing only certain persons to access such photo listing component; requiring consultation with children of a certain age during development of their description; conforming provisions to changes made by the act; amending s. 409.988, F.S.; revising the list of children a community-based care lead agency must serve; providing effective dates.

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

Section 1. Subsection (88) is added to section 39.01, Florida Statutes, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(88) "Visitor" means a person who:

(a) Provides care or supervision to a child in the home; or

(b) Is 12 years of age or older, other than a child in care, and who will be in the child's home at least:

1. Five consecutive days; or

2. Seven days or more in 1 month.

Section 2. Subsections (1) and (5) of section 39.0138, Florida Statutes, are amended to read:

39.0138 Criminal history and other records checks; limit on placement of a child.—

(1) The department shall conduct a records check through the Comprehensive ~~State Automated~~ Child Welfare Information System ~~(SACWIS)~~ and a local and statewide criminal history

records check on all persons, including parents, being considered by the department for placement of a child under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other visitors 18 years of age and older to the home. An out-of-state criminal history records check must be initiated for any person 18 years of age or older who resided in another state if that state allows the release of such records. The department must complete the records check within 14 business days after receiving a person's criminal history results, unless additional information is required to complete the processing. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

(5)(a) If a child has been sheltered pursuant to s. 39.402 and must be placed in out-of-home care in an emergency placement, the department must conduct a name-based check of criminal history records to ascertain if the person with whom placement of the child is being considered and any other adult household members or visitors of the home of such person are disqualified. For the purposes of this subsection, the term

"emergency placement" refers to when the department is placing a child in the home of private individuals, including neighbors, friends, or relatives, as a result of an immediate removal pursuant to s. 39.402.

(b) The department may place a child in the ~~a~~ home if the person with whom placement of the child is being considered and any other adult household members or visitors of the home are not disqualified by the name-based check, but, unless exempt, such persons must submit a full set of fingerprints to the department or to a vendor, an entity, or an agency authorized under s. 943.053(13). Unless exempt, within 7 calendar days after the name-based check, the department or the vendor, entity, or agency must submit the fingerprints to the Department of Law Enforcement for state processing. Within 15 calendar days after the name-based check is conducted, the Department of Law Enforcement must forward the fingerprints to the Federal Bureau of Investigation for national processing ~~that otherwise meets placement requirements if a name check of state and local criminal history records systems does not disqualify the applicant and if the department submits fingerprints to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the state and national criminal history records check~~.

(c) The department shall seek a court order to immediately remove the child from the home if the person with whom the child was placed or any other adult household members or visitors of the home fail to provide their fingerprints within 15 calendar days after the name-based check is conducted, if such persons are not exempt from a criminal history records check.

Section 3. Section 39.5035, Florida Statutes, is created to read:

39.5035 Deceased parents; special procedures.—

(1)(a)1. If both parents of a child are deceased or the last known living parent of a child is deceased and a legal custodian has not been appointed for the child through a probate or guardianship proceeding, an attorney for the department or any other person who has knowledge of the facts alleged or is informed of such facts, and believes them to be true, may initiate a proceeding by filing a petition for adjudication and permanent commitment.

2. If a child has been placed in shelter status by order of the court but has not yet been adjudicated, a petition for adjudication and permanent commitment must be filed within 21 days after the shelter hearing. In all other cases, the petition must be filed within a reasonable time after the date the petitioner first becomes aware of the facts alleged supporting the petition for adjudication and permanent commitment.

(b) If both parents die or the last known living parent dies after a child has been adjudicated dependent, an attorney for the department or any other person who has knowledge of the facts alleged or is informed of such facts, and believes them to be true, may file a petition for permanent commitment. The petition must be filed within a reasonable time after the petitioner first becomes aware of the alleged facts that support the petition for permanent commitment.

(2) The petition must:

(a) Be in writing, identify the alleged deceased parents, and provide facts that establish that both parents of the child

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are deceased or the last known living parent is deceased and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding.

(b) Be signed by the petitioner under oath stating the petitioner's good faith in filing the petition.

(3) When a petition for adjudication and permanent commitment or a petition for permanent commitment has been filed, the clerk of court shall set the case before the court for an adjudicatory hearing. The adjudicatory hearing must be held as soon as practicable after the petition is filed, but no later than 30 days after the filing date.

(4) Notice of the date, time, and place of the adjudicatory hearing and a copy of the petition must be served on the following persons:

(a) Any person who has physical custody of the child.

(b) A living relative of each parent of the child, unless a living relative cannot be found after a diligent search or inquiry.

(c) The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.

(5) The court shall conduct adjudicatory hearings without a jury and apply the rules of evidence in use in civil cases, adjourning the hearings as necessary. The court shall determine whether the petitioner has established by clear and convincing evidence that both parents of the child are deceased, or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry, and that a legal custodian has not been appointed for the child through a

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

probate or guardianship proceeding. A certified copy of the death certificate for each parent is sufficient evidence of the parents' deaths.

(6) Within 30 days after an adjudicatory hearing on a petition for adjudication and permanent commitment:

(a) If the court finds that the petitioner has met the clear and convincing standard, the court must enter a written order adjudicating the child dependent and permanently committing the child to the custody of the department for the purpose of adoption. A disposition hearing must be scheduled no later than 30 days after the entry of the order, in which the department must provide a case plan that identifies the permanency goal for the child to the court. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete all steps necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court must hold hearings every 6 months to review the progress being made toward permanency for the child.

(b) If the court finds that clear and convincing evidence does not establish that both parents of a child are deceased, or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry, and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding, but that a preponderance of the evidence establishes that the child does not have a parent or legal custodian capable of providing supervision or care, the court must enter a written order

adjudicating the child dependent. A disposition hearing must be scheduled no later than 30 days after the entry of the order as provided in s. 39.521.

(c) If the court finds that the petitioner has not met the clear and convincing standard and that a preponderance of the evidence does not establish that the child does not have a parent or legal custodian capable of providing supervision or care, the court must enter a written order so finding and dismiss the petition.

(7) Within 30 days after an adjudicatory hearing on a petition for permanent commitment:

(a) If the court finds that the petitioner has met the clear and convincing standard, the court must enter a written order permanently committing the child to the custody of the department for purposes of adoption. A disposition hearing must be scheduled no later than 30 days after the entry of the order, in which the department must provide an amended case plan that identifies the permanency goal for the child to the court. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete all steps necessary to finalize the permanent placement of the child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court must hold hearings every 6 months to review the progress being made toward permanency for the child.

(b) If the court finds that clear and convincing evidence does not establish that both parents of a child are deceased or that the last known living parent is deceased and the other parent cannot be found after a diligent search or inquiry, the

court must enter a written order denying the petition. The order has no effect on the child's prior adjudication. The order does not bar the petitioner from filing a subsequent petition for permanent commitment based on newly discovered evidence that establishes that both parents of a child are deceased, or that the last known living parent is deceased, and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding.

Section 4. Paragraph (o) of subsection (2) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(2) The family functioning assessment must provide the court with the following documented information:

(o) If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report concerning the proposed placement shall be provided to the court. Before recommending to the court any out-of-home placement for a child other than placement in a licensed shelter or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a minimum:

1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.

2. Records checks through the Comprehensive ~~State Automated~~ Child Welfare Information System ~~(SACWIS)~~, and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older. In addition, the fingerprints of any household

members who are 18 years of age or older may be submitted to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information. The department has the discretion to request Comprehensive ~~State Automated~~ Child Welfare Information System ~~(SACWIS)~~ and local, statewide, and national criminal history checks and fingerprinting of any other visitor to the home who is made known to the department. Out-of-state criminal records checks must be initiated for any individual who has resided in a state other than Florida if that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.

3. An assessment of the physical environment of the home.

4. A determination of the financial security of the proposed legal custodians.

5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

8. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

The department may not place the child or continue the placement

of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

Section 5. Subsection (7) is added to section 39.522, Florida Statutes, to read:

39.522 Postdisposition change of custody.—

(7) Notwithstanding any other provision of this section, a child's case manager, an authorized agent of the department, or a law enforcement officer may, at any time, remove a child from a court-ordered placement and take the child into custody if the court-ordered caregiver of the child requests immediate removal of the child from the home. Additionally, an authorized agent of the department or a law enforcement officer may, at any time, remove a child from a court-ordered placement and take the child into custody if there is probable cause as required under s. 39.401(1)(b).

(a) If, at the time of the removal, the child was not placed in licensed care in the department's custody, the department must file a motion to modify placement within 1 business day after the child is taken into custody. The court

must then set a hearing within 24 hours after the motion is filed unless all of the parties and the current caregiver agree to the change of placement. At the hearing, the court must determine whether the department has established probable cause to support the immediate removal of the child from his or her current placement. The court may base its determination on a sworn petition or affidavit or on testimony and may hear all relevant and material evidence, including oral or written reports, to the extent of their probative value, even if such evidence would not be competent evidence at an adjudicatory hearing.

(b) If the court finds that the department did not establish probable cause to support the removal of the child from his or her current placement, the court must enter an order that the child be returned to such placement. An order by the court to return the child to his or her current placement does not preclude a party from filing a subsequent motion pursuant to subsection (2).

(c) If the current caregiver admits that a change of placement is needed or the department establishes probable cause to support removal of the child, the court must enter an order changing the placement of the child. The new placement for the child must meet the home study criteria in this chapter if the child is not placed in foster care.

(d) If the court finds probable cause and modifies the child's placement, the court must conduct a hearing pursuant to subsection (2) or subsection (3), unless such hearing is waived by all parties and the caregiver.

Section 6. Paragraph (a) of subsection (1) of section

39.6221, Florida Statutes, is amended to read:

39.6221 Permanent guardianship of a dependent child.—

(1) If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

(a) The child has been in the placement for not less than the preceding 6 months, or the preceding 3 months if the caregiver is already known by the child and the caregiver has been named as the successor guardian on the child's guardianship assistance agreement.

Section 7. Subsection (9) of section 39.6225, Florida Statutes, is amended to read:

39.6225 Guardianship Assistance Program.—

(9) Guardianship assistance payments may not ~~shall only~~ be made for a young adult unless the young adult's ~~whose~~ permanent guardian entered into a guardianship assistance agreement after the child attained 14 ~~16~~ years of age but before the child attained 18 years of age and if the child is:

(a) Completing secondary education or a program leading to an equivalent credential;

(b) Enrolled in an institution that provides postsecondary or vocational education;

(c) Participating in a program or activity designed to promote or eliminate barriers to employment;

(d) Employed for at least 80 hours per month; or

(e) Unable to participate in programs or activities listed in paragraphs (a)-(d) full time due to a physical, intellectual,

emotional, or psychiatric condition that limits participation. Any such barrier to participation must be supported by documentation in the child's case file or school or medical records of a physical, intellectual, emotional, or psychiatric condition that impairs the child's ability to perform one or more life activities.

Section 8. Present paragraph (d) of subsection (3) of section 39.801, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection, to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(d) Personal appearance of a person at the advisory hearing as provided in s. 39.013(13) obviates the necessity of serving process on that person and the court may proceed with the advisory hearing and any subsequently noticed hearing.

Section 9. Subsections (4), (5), and (6) of section 39.812, Florida Statutes, are amended to read:

39.812 Postdisposition relief; petition for adoption.—

(4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, ~~for good cause shown by the guardian ad~~

~~litem for the child,~~ the court may:

(a) Review the appropriateness of the adoptive placement of the child if good cause is shown by the guardian ad litem for the child.

(b) Review the department's denial of an application to adopt a child. The department's decision to deny an application to adopt a child is only reviewable under this section and is not subject to chapter 120.

1. If the department denies an application to adopt a child, the department must file written notification of the denial with the court and provide copies to all parties within 10 business days after the department's decision.

2. A denied applicant may file a motion to have the court review the department's denial within 30 business days after the issuance of the department's written notification of its decision to deny the application to adopt a child. The motion to review must allege that the department unreasonably denied the application to adopt and request that the court allow the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.

3. A denied applicant only has standing under this chapter to file a motion to review the department's denial and to present evidence in support of such motion. Such standing is terminated upon the entry of the court's order.

4. The court shall hold a hearing within 30 business days after the denied applicant files the motion to review. The court may only consider whether the department's denial of the application is consistent with its policies and if the department made such decision in an expeditious manner. The

standard of review is whether the department's denial of the application is an abuse of discretion.

5. If the department selected a different applicant to adopt the child, the selected applicant may participate in the hearing as a participant as defined in s. 39.01 and may be granted leave by the court to be heard without the need to file a motion to intervene.

6. Within 15 business days after the conclusion of the hearing, the court shall enter a written order denying the motion to review or finding that the department unreasonably denied the application to adopt and authorizing the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.

(5) When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:

(a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;

(b) Thirty business days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed;

(c) A motion to review the department's denial of an application to adopt a child under paragraph (4)(b) has been

denied; or

(d) ~~(c)~~ The foster parent or custodian agrees to the child's removal.

(6) ~~(5)~~ The petition for adoption must be filed in the division of the circuit court which entered the judgment terminating parental rights, unless a motion for change of venue is granted pursuant to s. 47.122. A copy of the consent to adopt executed by the department must be attached to the petition, unless such consent is waived under ~~pursuant to~~ s. 63.062(7). The petition must be accompanied by a statement, signed by the prospective adoptive parents, acknowledging receipt of all information required to be disclosed under s. 63.085 and a form provided by the department which details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The prospective adoptive parents may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63.

(7) ~~(6)~~ (a) Once a child's adoption is finalized, the department or its contracted child-placing agency ~~community-based care lead agency~~ must make a reasonable effort to contact the adoptive family by telephone 1 year after the date of finalization of the adoption as a postadoption service. For purposes of this subsection, the term "reasonable effort" means the exercise of reasonable diligence and care by the department or its contracted child-placing agency ~~community based care lead agency~~ to make contact with the adoptive family. At a minimum, the department or its contracted child-placing agency must

document the following:

1. The number of attempts made by the department or its contracted child-placing agency ~~community-based care lead agency~~ to contact the adoptive family and whether those attempts were successful;

2. The types of postadoption services that were requested by the adoptive family and whether those services were provided by the department or its contracted child-placing agency ~~community-based care lead agency~~; and

3. Any feedback received by the department or its contracted child-placing agency ~~community-based care lead agency~~ from the adoptive family relating to the quality or effectiveness of the services provided.

(b) The contracted child-placing agency ~~community-based care lead agency~~ must report annually to the department on the outcomes achieved and recommendations for improvement under this subsection.

Section 10. Present subsection (6) and (7) of section 63.032, Florida Statutes, are redesignated as subsections (7) and (6), respectively, and present subsection (6) of that section is amended to read:

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

(7) ~~(6)~~ "Child-placing agency" means an ~~any child-placing~~ agency licensed by the department pursuant to s. 63.202 to place minors for adoption.

Section 11. Present subsections (3), (4), and (5) of section 63.039, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, and a new subsection (3) is added to that section, to read:

63.039 Duty of adoption entity to prospective adoptive parents; sanctions.—

(3) A licensed adoption entity must, on a quarterly basis, report to the department all private adoptions that were finalized in the preceding quarter. Information must include the age of the child, the race of the child, the ethnicity of the child, the sex of the child, the county of birth of the child, and the county of adoptive family of the child. The department may adopt rules to implement this section. The department shall make this information available as aggregate data on its website.

Section 12. Subsection (7) of section 63.062, Florida Statutes, is amended to read:

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.—

(7) If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required. If the minor has been permanently committed to the department for subsequent adoption, the department must consent to the adoption or the court order finding that the department unreasonably denied the application to adopt entered under s. 39.812(4) must be attached to the petition to adopt, and ~~The consent of the department shall be waived upon a determination by the court that such consent is being unreasonably withheld and if~~ the petitioner must file ~~has filed~~ with the court a favorable preliminary adoptive home study as required under s. 63.092.

Section 13. Section 63.093, Florida Statutes, is amended to

read:

63.093 Adoption of children from the child welfare system.—

(1) Beginning July 1, 2025, the department shall contract with one or more child-placing agencies to provide adoptive services to prospective adoptive parents, complete the adoption processes for children permanently committed to the department, and support adoptive families. The department may authorize a contracted child-placing agency to subcontract with other entities to fulfill the duties imposed in this section.

(2) The department, through its contracted child-placing agency ~~or community-based care lead agency as defined in s. 409.986(3), or its subcontracted agency~~, must respond to an initial inquiry from a prospective adoptive parent within 7 business days after receipt of the inquiry. The response must inform the prospective adoptive parent of the adoption process and the requirements for adopting a child from the child welfare system.

(3) ~~(2)~~ The department, through its contracted child-placing agency ~~or community-based care lead agency, or its subcontracted agency~~, must refer a prospective adoptive parent who is interested in adopting a child in the custody of the department to a department-approved adoptive parent training program. A prospective adoptive parent must successfully complete the training program, unless the prospective adoptive parent is a licensed foster parent or a relative or nonrelative caregiver who has:

(a) Attended the training program within the last 5 years; or

(b) Had the child who is available for adoption placed in

their home for 6 months or longer and has been determined to understand the challenges and parenting skills needed to successfully parent the child who is available for adoption.

(4) ~~(3)~~ A prospective adoptive parent must complete an adoption application created by the department.

(5) ~~(4)~~ Before a child is placed in an adoptive home, the department, through its contracted child-placing agency, ~~community-based care lead agency or its subcontracted agency~~ must complete an adoptive home study of a prospective adoptive parent that includes observation, screening, and evaluation of the child and the prospective adoptive parent. An adoptive home study must be updated every ~~is valid for~~ 12 months after the date on which the study was approved. If the child was placed before the termination of parental rights, the updated placement or licensed home study may serve as the adoption home study. In addition, the department, through its contracted child-placing agency, ~~community-based care lead agency or its subcontracted agency~~ must complete a preparation process, as established by department rule, with the prospective adoptive parent.

(6) ~~(5)~~ At the conclusion of the adoptive home study and preparation process, a decision must ~~shall~~ be made about the prospective adoptive parent's appropriateness to adopt. This decision shall be reflected in the final recommendation included in the adoptive home study. If the recommendation is for approval, the adoptive parent application file must be submitted to the department, through its contracted child-placing agency, ~~community based care lead agency or its subcontracted agency~~ for approval. The contracted child-placing agency ~~community based care lead agency or its subcontracted agency~~ must approve or

deny the home study within 14 business days after receipt of the recommendation.

(7) The department shall adopt rules to eliminate duplicative practices and delays in the adoption home study process for a member of a uniformed service on active duty seeking to adopt in the state, including, but not limited to, providing a credit for adoption classes that have been taken in another state which substantially cover the preservice training required under s. 409.175(14)(b).

(8) By November 15 of each year, the department shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of adoptions within this state.

Notwithstanding subsections (2) and (3) ~~(1) and (2)~~, this section does not apply to a child adopted through the process provided in s. 63.082(6).

Section 14. Subsections (1), (3), (4), and (5) of section 63.097, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

63.097 Fees.—

(1) When the adoption entity is an agency, fees may be assessed if such fees ~~they~~ are approved by the department within the process of licensing the agency and if such fees ~~they~~ are for:

(a) Foster care expenses;

(b) Preplacement and postplacement social services; and

(c) Agency facility and administrative costs.

(3) The court must issue an order pursuant to s. 63.132(3)

when ~~Approval of the court is not required until~~ the total of amounts permitted under subsection (2) exceeds:

(a) $5,000 in legal or other professional fees;

(b) $800 in court costs; or

(c) $5,000 in reasonable and necessary living and medical expenses.

(4) Any fees, costs, or expenses not included in subsection (2) ~~or prohibited under subsection (5)~~ require court approval and entry of an order pursuant to s. 63.132(3) before ~~prior to~~ payment and must be based on a finding of extraordinary circumstances.

(5) The following fees, costs, and expenses are prohibited:

(a) Any fee or expense that constitutes payment for locating a minor for adoption.

(b) Any payment which is not itemized and documented on the affidavit filed under s. 63.132.

(c) Any fee on the affidavit which is not a fee of the adoption entity, is not supported by a receipt, and does not specify the service that was provided and for which the fee is being charged, such as a fee for facilitation, acquisition, or other similar service, or which does not identify the date the service was provided, the time required to provide the service, the person or entity providing the service, and the hourly fee charged.

(7) Beginning January 1, 2025, an adoption entity shall report quarterly to the department information related to the age, race, ethnicity, sex, and county of birth of the adopted child and the county of residence of the adoptive family for each finalized adoption. The department shall also report for

each adoption the fees, costs, and expenses that were assessed by the adoption entity or paid by the adoption entity on behalf of the prospective adoptive parents, itemized by the categories enumerated in subsection (2), and any fees, costs, and expenses approved by the court under subsection (4). The confidentiality provisions of this chapter do not apply to the fees, costs, and expenses assessed or paid in connection with an adoption. In reporting the information required by this subsection to the department, the adoption entity shall redact any confidential identifying information concerning the child's biological parents and the child's adoptive parents. The department shall report quarterly on its website information for each adoption agency, including the actual fees, costs, and expenses of finalized adoptions. The department shall adopt rules to implement this subsection.

Section 15. Subsection (3) of section 63.132, Florida Statutes, is amended to read:

63.132 Affidavit of expenses and receipts.—

(3) The court must issue a separate order approving or disapproving the fees, costs, and expenses itemized in the affidavit. The court may approve only fees, costs, and expenditures allowed under s. 63.097. An order approving fees, costs, and expenses that exceed the limits set in s. 63.097 must include a written determination of reasonableness. The court may reject in whole or in part any fee, cost, or expenditure listed if the court finds that the expense is any of the following:

(a) Contrary to this chapter.

(b) Not supported by a receipt~~, if requested~~, if the expense is not a fee of the adoption entity.

(c) Not a reasonable fee or expense, considering the requirements of this chapter and the totality of the circumstances.

Section 16. Paragraph (g) of subsection (1) of section 63.212, Florida Statutes, is amended to read:

63.212 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person:

(g) Except an adoption entity, to place an advertisement or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and, further, it is unlawful for any person purchasing advertising space or purchasing broadcast time to advertise adoption services to fail to include in any publication or fail to include in the broadcast for such advertisement the Florida license number of the adoption entity or The Florida Bar number of the attorney placing the advertisement. This prohibition applies to, but is not limited to, a paid advertisement, an article, a notice, or any other paid communication published in any newspaper or magazine, or on the Internet, on a billboard, over radio or television, or other similar media.

1. Only a person who is an attorney licensed to practice law in this state or an adoption entity licensed under the laws of this state may place an advertisement in this state ~~a paid advertisement or paid listing of the person's telephone number, on the person's own behalf, in a telephone directory~~ that:

a. A child is offered or wanted for adoption; or

b. The person is able to place, locate, or receive a child for adoption.

2. A person who publishes a telephone directory, newspaper,

magazine, billboard, or any other written advertisement that is distributed in this state shall include~~, at the beginning of any classified heading for adoption and adoption services,~~ a statement ~~that informs directory users~~ that only attorneys licensed to practice law in this state and ~~licensed~~ adoption entities licensed under the laws of this state may legally provide adoption services under state law.

3. A person who places an advertisement ~~described in subparagraph 1. in a telephone directory~~ must include the following information:

a. For an attorney licensed to practice law in this state, the person's Florida Bar number.

b. For a child-placing agency licensed under the laws of this state, the number on the person's adoption entity license.

Section 17. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 409.1451, Florida Statutes, are amended to read:

409.1451 The Road-to-Independence Program.—

(2) POSTSECONDARY EDUCATION SERVICES AND SUPPORT.—

(a) A young adult is eligible for services and support under this subsection if he or she:

1. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 14 ~~16~~ years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;

2. Spent at least 6 months in licensed care before reaching his or her 18th birthday;

3. Earned a standard high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent pursuant to s. 1003.435;

4. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. 1009.533. For purposes of this section, the term "full-time" means 9 credit hours or the vocational school equivalent. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor;

5. Has reached 18 years of age but is not yet 23 years of age;

6. Has applied, with assistance from the young adult's caregiver and the community-based lead agency, for any other grants and scholarships for which he or she may qualify;

7. Submitted a Free Application for Federal Student Aid which is complete and error free; and

8. Signed an agreement to allow the department and the community-based care lead agency access to school records.

(3) AFTERCARE SERVICES.—

(a)1. Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age and is:

a. Not in foster care.

b. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.

c. Eligible for extended guardianship assistance payments under s. 39.6225(9) or extended adoption assistance under s. 409.166(4), but is not participating in either program.

2. Subject to available funding, aftercare services as specified in subparagraph (b)8. are also available to a young adult who is between the ages of 18 and 22, is receiving financial assistance under subsection (2), is experiencing an emergency situation, and whose resources are insufficient to meet the emergency situation. Such assistance shall be in addition to any amount specified in paragraph (2)(b).

Section 18. Paragraph (d) of subsection (4) of section 409.166, Florida Statutes, is amended to read:

409.166 Children within the child welfare system; adoption assistance program.—

(4) ADOPTION ASSISTANCE.—

(d) Effective January 1, 2019, adoption assistance payments may be made for a child whose adoptive parent entered into an initial adoption assistance agreement after the child reached 14 ~~16~~ years of age but before the child reached 18 years of age. Such payments may be made until the child reaches age 21 if the child is:

1. Completing secondary education or a program leading to an equivalent credential;

2. Enrolled in an institution that provides postsecondary or vocational education;

3. Participating in a program or activity designed to promote or eliminate barriers to employment;

4. Employed for at least 80 hours per month; or

5. Unable to participate in programs or activities listed

in subparagraphs 1.-4. full time due to a physical, an intellectual, an emotional, or a psychiatric condition that limits participation. Any such barrier to participation must be supported by documentation in the child's case file or school or medical records of a physical, an intellectual, an emotional, or a psychiatric condition that impairs the child's ability to perform one or more life activities.

Section 19. Section 409.1662, Florida Statutes, is repealed.

Section 20. Section 409.1664, Florida Statutes, is amended to read:

409.1664 Adoption benefits for qualifying adoptive employees of state agencies, veterans, servicemembers, ~~and~~ law enforcement officers, health care practitioners, and tax collector employees.—

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

(a) "Child within the child welfare system" has the same meaning as provided in s. 409.166(2).

(b) "Health care practitioner" means a person listed in s. 456.001(4) who holds an active license from the Department of Health and whose gross income does not exceed $150,000 per year.

(c) "Law enforcement officer" has the same meaning as provided in s. 943.10(1).

(d) ~~(c)~~ "Qualifying adoptive employee" means a full-time or part-time employee of a state agency, a charter school established under s. 1002.33, or the Florida Virtual School established under s. 1002.37, who is not an independent contractor and who adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. The term

includes instructional personnel, as defined in s. 1012.01, who are employed by the Florida School for the Deaf and the Blind, and includes other-personal-services employees who have been continuously employed full time or part time by a state agency for at least 1 year.

(e) ~~(d)~~ "Servicemember" has the same meaning as in s. 250.01(19).

(f) ~~(e)~~ "State agency" means a branch, department, or agency of state government for which the Chief Financial Officer processes payroll requisitions, a state university or Florida College System institution as defined in s. 1000.21, a school district unit as defined in s. 1001.30, or a water management district as defined in s. 373.019.

(g) "Tax collector employee" means an employee of an office of county tax collector in this state.

(h) ~~(f)~~ "Veteran" has the same meaning as in s. 1.01(14).

(2) A qualifying adoptive employee, veteran, law enforcement officer, health care practitioner, tax collector employee, or servicemember who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $25,000 ~~$10,000~~ per such child, subject to applicable taxes. ~~A law enforcement officer who adopts a child within the child welfare system who is difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $25,000 per such child, subject to applicable taxes.~~ A qualifying adoptive employee, veteran, law enforcement officer, health care practitioner, tax collector employee, or servicemember who

adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 ~~$5,000~~ per such child, subject to applicable taxes. ~~A law enforcement officer who adopts a child within the child welfare system who is not difficult to place as described in s. 409.166(2)(d)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 per each such child, subject to applicable taxes.~~ A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the monetary benefit provided in this subsection if such employee was employed by a charter school or the Florida Virtual School when he or she adopted a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. A veteran or servicemember may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2020. A law enforcement officer may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2022. A health care practitioner or tax collector employee may apply for the monetary benefit provided in this subsection if he or she is domiciled in this state and adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2024.

(a) Benefits paid to a qualifying adoptive employee who is a part-time employee must be prorated based on the qualifying adoptive employee's full-time equivalency at the time of

applying for the benefits.

(b) Monetary benefits awarded under this subsection are limited to one award per adopted child within the child welfare system.

(c) The payment of a lump-sum monetary benefit for adopting a child within the child welfare system under this section is subject to a specific appropriation to the department for such purpose.

(3) A qualifying adoptive employee must apply to his or her agency head, or to his or her school director in the case of a qualifying adoptive employee of a charter school or the Florida Virtual School, to obtain the monetary benefit provided in subsection (2). A veteran, ~~or~~ servicemember, or tax collector employee must apply to the department to obtain the benefit. A law enforcement officer must apply to the Department of Law Enforcement to obtain the benefit. A health care practitioner must apply to the Department of Health to obtain the benefit. Applications must be on forms approved by the department and must include a certified copy of the final order of adoption naming the applicant as the adoptive parent. Monetary benefits shall be approved on a first-come, first-served basis based upon the date that each fully completed application is received by the department.

(4) This section does not preclude a qualifying adoptive employee, veteran, servicemember, health care practitioner, tax collector employee, or law enforcement officer from receiving adoption assistance for which he or she may qualify under s. 409.166 or any other statute that provides financial incentives for the adoption of children.

(5) Parental leave for a qualifying adoptive employee must be provided in accordance with the personnel policies and procedures of his or her employer.

(6) The department may adopt rules to administer this section. The rules may provide for an application process such as, but not limited to, an open enrollment period during which qualifying adoptive employees, veterans, servicemembers, health care practitioners, tax collector employees, or law enforcement officers may apply for monetary benefits under this section.

(7) The Chief Financial Officer shall disburse a monetary benefit to a qualifying adoptive employee upon the department's submission of a payroll requisition. The Chief Financial Officer shall transfer funds from the department to a state university, a Florida College System institution, a school district unit, a charter school, the Florida Virtual School, or a water management district, as appropriate, to enable payment to the qualifying adoptive employee through the payroll systems as long as funds are available for such purpose.

(8) To receive an approved monetary benefit under this section, a veteran or servicemember must be registered as a vendor with the state.

(9) Each state agency shall develop a uniform procedure for informing employees about this benefit and for assisting the department in making eligibility determinations and processing applications. Any procedure adopted by a state agency is valid and enforceable if the procedure does not conflict with the express terms of this section.

Section 21. Subsections (1) through (4) of section 409.167, Florida Statutes, are amended to read:

409.167 Statewide adoption exchange; establishment; responsibilities; registration requirements; rules.—

(1) The Department of Children and Families shall establish, either directly or through purchase, a statewide adoption exchange, with a photo listing component, which serves ~~shall serve~~ all authorized licensed child-placing agencies in the state as a means of recruiting adoptive families for children who have been legally freed for adoption and who have been permanently placed with the department or a licensed child-placing agency. The statewide adoption exchange must ~~shall~~ provide, in accordance with rules adopted by the department, descriptions and photographs of such children, as well as any other information deemed useful in the recruitment of adoptive families for each child. The photo listing component of the statewide adoption exchange must be updated monthly and may not be accessible to the public, except to persons who have completed or are in the process of completing an adoption home study.

(2)(a) Each district of the department shall refer each child in its care who has been legally freed for adoption to the statewide adoption exchange no later than 30 days after the date of acceptance by the department for permanent placement. The referral must be accompanied by a photo listing ~~photograph~~ and description of the child. Any child 12 years of age or older may request that a specific photo be used for their entry and must be consulted during the development of their description.

(b) The department shall establish criteria by which a district may determine that a child need not be registered with the statewide adoption exchange. Within 30 days after the date

of acceptance by the department for permanent placement, the name of the child accepted for permanent placement must be forwarded to the statewide adoption exchange by the district together with reference to the specific reason why the child should not be placed on the statewide adoption exchange. If the child has not been placed for adoption within 3 months after the date of acceptance by the department for permanent placement, the district must ~~shall~~ provide the statewide adoption exchange with the necessary photograph and information for registration of the child with the statewide adoption exchange and the child must ~~shall~~ be placed on the statewide adoption exchange. The department shall establish procedures for monitoring the status of children who are not placed on the statewide adoption exchange within 30 days after the date of acceptance by the department for permanent placement.

(3) In accordance with rules established by the department, the statewide adoption exchange may accept, from licensed child-placing agencies, information pertaining to children meeting the criteria of this section, and to prospective adoptive families, for registration with the statewide adoption exchange.

(4) For purposes of facilitating family-matching between children and prospective adoptive parents, the statewide adoption exchange must ~~shall~~ provide the photo listing component ~~service~~ to all licensed child-placing agencies and, in accordance with rules adopted ~~established~~ by the department, to all appropriate citizen groups and other organizations and associations interested in children's services. The photo listing component of the statewide adoption exchange may not be accessible to the public, except to persons who have completed

or are in the process of completing an adoption home study.

Section 22. Effective July 1, 2025, paragraph (a) of subsection (1) of section 409.988, Florida Statutes, is amended to read:

409.988 Community-based care lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(a)1. Shall serve~~:~~

~~a.~~ all children referred as a result of a report of abuse, neglect, or abandonment to the department's central abuse hotline, including, but not limited to, children who are the subject of verified reports and children who are not the subject of verified reports but who are at moderate to extremely high risk of abuse, neglect, or abandonment, as determined using the department's risk assessment instrument, regardless of the level of funding allocated to the lead agency by the state if all related funding is transferred.

~~b. Children who were adopted from the child welfare system and whose families require postadoption supports.~~

2. May also serve children who have not been the subject of reports of abuse, neglect, or abandonment, but who are at risk of abuse, neglect, or abandonment, to prevent their entry into the child protection and child welfare system.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1486
Bill Number or Topic

Amendment Barcode (if applicable)

Name Sam Kercé

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Address 2415 N. Monroe St.
Street

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Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
DCF

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/CS/SB 1582
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Health and Human Services; Health Policy Committee; and Senator Rodriguez
SUBJECT:	Department of Health
DATE:	February 29, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Fav/CS**
2.	Gerbrandt	McKnight	AHS	**Fav/CS**
3.	Rossitto-Van Winkle	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1582 amends numerous statutory provisions relating to the Department of Health (DOH) and creates a new program within the department. The bill:

- Creates a new profession, the environmental health technician (EHT), and allows the technician to perform septic tank inspections without having a four-year degree;
- Creates the Andrew John Anderson Pediatric Rare Disease Grant Program to advance research and cures for rare pediatric diseases by awarding grants through a competitive, peer-reviewed process;
- Clarifies the responsibility for providing newborn screenings and the submission of newborn screening specimen cards. The bill also adds genetic counselors to the list of health care practitioners who may receive state lab results;
- Standardizes the requirements for newborn, infant, and toddler hearing screening at hospitals, licensed birth facilities, and birth centers to ensure timely congenital cytomegalovirus (CMV) screening;
- Allows parents or guardians of newborns who have been identified as having sickle cell disease or carrying the sickle cell trait to opt-out of the state's sickle cell registry;
- Standardizes requirements, and clarifies the purpose, of prenatal high-risk pregnancy and postnatal infant mortality and morbidity screening for environmental risk factors;

- Allows certain applicants for licensure as a Medical Marijuana Treatment Center 90 days to cure application deficiencies and requires the DOH to issue a license if those deficiencies are cured. The amendment also exempts these applicants from the five-year business requirement established in s. 381.986, F.S.; and
- Increases the number of members on the Florida Cancer Control and Research Advisory Council (CCRAB) from 15 to 16 and requires the additional member to be a representative of the Mayo Clinic in Jacksonville.

The bill does not have a fiscal impact on state expenditures. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

The Department of Health

The Department of Health (DOH) is responsible for the state's public health system, which must be designed to promote, protect, and improve the health of all people in the state.[1]

Environmental Health Professionals

Environmental health is that segment of public health work that deals with the examination of those factors in the human environment which may adversely impact the health status of an individual or the public.[2] An environmental health professional (EHP) is a person employed or assigned the responsibility of assessing the environmental health or sanitary conditions, as defined by the DOH, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. An EHP may be a field, supervisory, or administrative staff member.[3]

A person may not perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the DOH as competent to perform such evaluations, with several exceptions.[4] Those exceptions include:

- Persons performing inspections of public food service establishments licensed under ch. 509, F.S., or
- Persons performing site evaluations to determine proper placement and installation of onsite wastewater treatment and disposal systems who have completed a DOH-approved soils morphology course and who are working under the direct responsible charge of an engineer licensed under ch. 471, F.S.

[1] Section 381.001, F.S.
[2] Section 381.010,(1)(c), F.S.
[3] Section 381.010,(1)(d), F.S.
[4] Section 381.010,(2), F.S. This section does not apply to persons performing inspections of public food service establishments licensed under ch. 509, F.S.; or persons performing site evaluations in order to determine proper placement and installation of onsite wastewater treatment and disposal systems who have successfully completed a DOH-approved soils morphology course and who are working under the direct responsible charge of an engineer licensed under ch. 471, F.S.

A person seeking certification as an EHP in any primary program area must:[5]

- Be employed or assigned to provide environmental health services in any primary environmental health program;[6]
- Submit the application and application fee to the DOH for the primary environmental health program in which the applicant seeks certification; and
- Submit an official college transcript evidencing a bachelor's degree from an accredited college or university with major coursework in environmental health, environmental science, or physical or biological science.

Within 45 days of the DOH's receipt of the completed application, the applicant will receive notice of whether he or she meets the general requirements and is eligible for certification and if eligible, will receive a schedule for classes and program examinations.

Applicants seeking certification in the Onsite Sewage Treatment and Disposal System Program must:

- Complete 24 hours of the DOH-provided pre-certification coursework which includes training and testing on soil classification, system design and theory, system material and construction standards, and regulatory requirements; and
- Pass the examinations administered by the DOH with a minimum passing score of 70 percent.[7]

Applicants seeking certification in the Food Protection Program must:

- Complete 24 hours of the DOH-provided pre-certification coursework which includes training and testing on food microbiology, foodborne illness investigations, and basic hazard analysis and critical control points (HACCP); and
- Pass the pre-certification coursework and certification examinations administered by the DOH with a minimum passing score of 70 percent.[8]

The DOH currently employs 448 certified environmental health professionals (CEHP), most of whom are housed in county health departments (CHD) to perform health evaluations at public food establishments and sanitary evaluations on private and business properties where onsite wastewater treatment and disposal systems are in use. Other CEHPs supervise CHD environmental health teams or work within the Bureau of Environmental Public Health to direct statewide programs.[9]

Section 381.0065, F.S., gives the Department of Environmental Protection (DEP) authority to inspect onsite sewage treatment and disposal systems (OSTDS), which CHD staff complete for the DEP as outlined in a five-year interagency agreement required by Section 2 of Chapter 2020-

[5] Fla. Admin. Code R. 64E-18.003(2023).
[6] Section 381.0101(2), F.S.
[7] Fla. Admin. Code R. 64E-18.003(6)(2023).
[8] Fla. Admin. Code R. 64E-18.003(7)(2023).
[9] This excludes establishments licensed under ch. 509, F.S., which operate under separate standards. *See*, Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).

150, Laws of Florida. It also authorizes four groups to complete private provider septic inspections, including two that do not require a four-year degree.[10]

Section 381.0101(4), F.S., sets out the standards for certification and grants the DOH the authority to adopt rules that establish definitions of terms and minimum standards of education, training, or experience for those seeking certification. CEHPs must earn certification from the DOH to perform evaluations of environmental or sanitary conditions in any program area of environmental health. However, due to the four-year degree requirement for environmental health professionals under section 381.0101(4)(e), F.S., CHDs are experiencing a shortage of qualified applicants for the OSTDS and food hygiene programs.[11]

Rare Diseases

The Federal Orphan Drug Act defines a rare disease as any condition that nationally affects fewer than 200,000 people. Over 7,000 rare diseases affect more than 30 million people in the United States. Many rare conditions are life-threatening and most do not have treatments. Drug, biologic, and device development in rare diseases is challenging for many reasons, including the complex biology and the lack of understanding of the natural history of many rare diseases. The inherently small population of patients with a rare disease can also make conducting clinical trials difficult.

Since the Orphan Drug Act was signed into law in 1983, the federal Food and Drug Administration (FDA) has approved hundreds of drugs for rare diseases, but most rare diseases do not have FDA-approved treatments. The FDA works with many people and groups, such as patients, caregivers, and drug and device manufacturers, to support rare disease product development. So, while the individual diseases may be rare, the total number of people impacted by a rare disease is larger.[12]

Rare diseases include genetic disorders, infectious diseases, cancers, and various other pediatric and adult conditions. A rare disease can affect anyone at any point in their life and can be acute or chronic. It is estimated that 80 percent or more of rare diseases are genetic. For genetic rare diseases, genetic testing is often the only way to make a definitive diagnosis.

Rare diseases present a fundamentally different array of challenges compared to those of more common diseases Often patients are set on a "diagnostic odyssey," to determine the cause of their symptoms as they seek treatment in healthcare settings where their condition may have never been seen before.[13]

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[10] Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).
[11] *Id.*
[12] United States Food and Drug Administration, *Rare Diseases at FDA*, available at https://www.fda.gov/patients/rare-diseases-fda (last visited Jan. 31, 2024).
[13] Department of Health, *Rare Disease Advisory Council: Legislative Report, Fiscal Year 2022-2023* (2023). Available at https://www.floridahealth.gov/provider-and-partner-resources/rdac/_documents/RDACLegislativeReport2023Final_Draft.pdf (last visited Jan. 31, 2024).

Rare Pediatric Disease (RPD) Designation and Voucher Programs

Under Section 529 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), the FDA will award priority review vouchers to sponsors of rare pediatric disease product applications that meet certain criteria. Under this program, a sponsor who receives approval for a drug or biologic for a "rare pediatric disease" may qualify for a voucher that can be redeemed to receive a priority review of a subsequent marketing application for a different product.[14]

On December 27, 2020, the Rare Pediatric Disease Priority Review Voucher Program was extended. Under the current statutory sunset provisions, after September 30, 2024, the FDA may only award a voucher for an approved rare pediatric disease product application if the sponsor has a rare pediatric disease designation for the drug and that designation was granted by September 30, 2024. After September 30, 2026, the FDA may not award any rare pediatric disease priority review vouchers.[15]

Rare Disease Advisory Council

In June 2021, the Rare Disease Advisory Council (Council) was created as an adjunct to the DOH. The Council comprises representatives from state agencies, health care providers, researchers, advocacy groups, insurance, and pharmaceutical industries, as well as individuals with rare diseases and caregivers of individuals with rare diseases. Council members hold a shared vision: to improve health outcomes for individuals residing in Florida who have rare diseases. The Council reports annually to the Governor, Senate President, and Speaker of the House of Representatives[16] The DOH is responsible for four research grant programs and will implement the proven strategies and processes for awarding highly meritorious grants that will support advancements for the prevention, treatment, and cures of pediatric rare diseases.[17]

Newborn Metabolic Screening Program

The Legislature created the Florida Newborn Screening Program (NBS Program) in 1965 within the DOH, to promote the screening of all newborns for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect.[18] The NBS Program also promotes the identification and screening of all newborns in the state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services.[19]

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[14] United States Food and Drug Administration, *Rare Pediatric Disease (RPD) Designation and Voucher Programs,* available at https://www.fda.gov/industry/medical-products-rare-diseases-and-conditions/rare-pediatric-disease-rpd-designation-and-voucher-programs (last visited Jan. 31, 2024).

[15] United States Food and Drug Administration, *Rare Pediatric Disease (RPD) Designation and Voucher Programs,* available at https://www.fda.gov/industry/medical-products-rare-diseases-and-conditions/rare-pediatric-disease-rpd-designation-and-voucher-programs (last visited Jan. 31, 2024).

[16] Section 381.99, F.S.

[17] Department of Health, *Rare Disease Advisory Council: Legislative Report, Fiscal Year 2022-2023* (2023). Available at https://www.floridahealth.gov/provider-and-partner-resources/rdac/_documents/RDACLegislativeReport2023Final_Draft.pdf (last visited Jan. 31, 2024).

[18] Section 383.14(1), F.S.

[19] *Id*.

The Legislature established the Florida Genetics and Newborn Screening Advisory Council to advise the DOH on disorders to be included in the NBS Program panel of screened disorders and the procedures for collecting and transmitting specimens.[20] The NBS Program began with the screening for phenylketonuria and now screens for 58 conditions prior to discharge. Of the conditions screened, 55 conditions are screened through the collection of blood spots. Screening of the three remaining conditions – hearing (hearing screening), critical congenital heart defect (CCHD) (pulse oximetry), and congenital cytomegalovirus (CMV) targeted screening – are completed at the birthing facility through point of care (POC) testing.[21]

The NBS Program involves coordination across several entities, including the Bureau of Public Health Laboratories Newborn Screening Laboratory in Jacksonville (state laboratory), The DOH Children's Medical Services (CMS) Newborn Screening Follow-up Program in Tallahassee, referral centers, birthing centers, and physicians throughout the state.[22] Healthcare providers in hospitals, birthing centers, perinatal centers, county health departments, and school health programs provide screening as part of the multilevel NBS Program screening process.[23] This includes a risk assessment for prenatal women, risk factor analysis and screening for postnatal women and newborns, and laboratory screening for select disorders in newborns.[24] The NBS Program attempts to screen all newborns for hearing impairment and to identify, diagnose, and manage newborns at risk for select disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death.[25] The NBS Program is intended to screen all prenatal women and newborns, however, parents and guardians may choose to decline the screening.[26]

Healthcare providers perform non-laboratory NBS Program screening, such as hearing and risk factor analysis, and report the results to the Office of Vital Statistics. If necessary, healthcare providers refer patients to the appropriate health, education, and social services.[27]

Healthcare providers in hospitals and birthing centers perform specimen collection for laboratory analysis for the NBS Program screening by collecting a few drops of blood from the newborn's heel on a standardized specimen collection card. [28] The specimen card is then sent to the state laboratory for testing and the results are released to the newborn's health care provider. If a newborn screen has an abnormal result, the newborn's health care practitioner,[29] or a nurse or

[20] Section 383.14(5), F.S.
[21] Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).
[22] Section 383.14, F.S.
[23] Section 383.14, F.S.
[24] *Id*.
[25] Florida Department of Health, *Florida Newborn Screening Guidelines, a*vailable at https://floridanewbornscreening.com/wp-content/uploads/NBS-Protocols-2022-FINAL.pdf (last visited Jan. 31, 2024).
[26] Section 383.14(4), F.S.; Fla. Admin. Code R. 64C-7.008, (2023). The health care provider must attempt to get a written statement of objection to be placed in the medical record.
[27] *Id*.
[28] Florida Newborn Screening, *What is Newborn Screening?* available at https://floridanewbornscreening.com/parents/what-is-newborn-screening/ (last visited Jan. 31, 2024). *See also,* Florida Newborn Screening, *Specimen Collection Card,* available at http://floridanewbornscreening.com/wp-content/uploads/Order-Form.png (last visited Jan. 31, 2024).
[29] Current law allows for the screening results to be released to specified health care practitioners including: allopathic and osteopathic physicians and physician assistants licensed under chs. 458 and 459, F.S., advanced practice registered nurses,

specialist from the NBS Program's "Follow-up Program" provides follow-up services and referrals for the child and his or her family.[30]

To administer the NBS Program, the DOH is authorized to charge and collect a fee, not to exceed $15 per live birth, occurring in a hospital or birth center.[31] The DOH must calculate the annual assessment for each hospital and birth center, and then quarterly generate and mail each hospital and birth center a statement of the amount due.[32] The DOH bills hospitals and birth centers quarterly using vital statistics data to determine the amount to be billed.[33] The DOH is authorized to bill third-party payers for the NBS Program tests and bills insurers directly for the cost of the screening.[34] The DOH does not bill families that do not have insurance coverage.[35]

The newborn screening report includes the screening results for all 58 conditions currently screened. Newborn screening is part of the standard of care for all infants. Florida law allows for a parent to opt-out of newborn screening prior to collection. This opt-out is documented in the medical record maintained by the collection facility. The NBS Program maintains the results of the newborn screenings and diagnostic results for newborns identified with a condition on the screening panel. Data are available from January 2006 forward. The DOH's retention schedule requires newborn screening records to be permanently maintained.[36]

Newborn Hearing Screening

Section 383.145, F.S., requires newborn hearing screening for all newborns in hospitals before discharge. The newborn hearing screening program (NBHS) is housed within the DOH, which coordinates the statewide hearing screening and follow-up referral system. The NBHS program is funded through a donations trust and federal grants from the federal Centers for Disease Control and Prevention and the Health Resources and Services Administration (HRSA).[37]

Before a newborn is discharged from a hospital or other state-licensed birthing facility, and unless objected to by the parent or legal guardian, the newborn must be screened for the detection of hearing loss to prevent the consequences of unidentified disorders.[38] For births occurring in a non-hospital setting, specifically a licensed birth center or private home, the facility or attending health care provider is responsible for providing a referral to an audiologist, a hospital, or other newborn hearing screening provider within seven days after the birth or discharge from the facility.[39]

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registered nurses, and licensed practical nurses licensed under ch. 464, F.S., a midwife licensed under ch. 467, F.S., a speech-language pathologist or audiologist licensed under part I of ch. 468, F.S., or a dietician or nutritionist licensed under part X of ch. 468, F.S.

[30] *Id*.

[31] Section 383.145(3)(g)1., F.S.

[32] *Id*.

[33] Section 383.145(3)(g), F.S.

[34] Section 383.145(3)(h), F.S.

[35] Section 383.14, F.S.

[36] Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).

[37] *Id*.

[38] Section 383.145(3), F.S. If the screening is not completed before discharge due to scheduling or temporary staffing limitations, the screening must be completed within 21 days after the birth.

[39] Section 383.145(3)(d), F.S.

All screenings must be conducted by a licensed audiologist, a licensed physician, or appropriately supervised individual who has completed documented training specifically for newborn hearing screening.[40] When ordered by the treating physician, screening of a newborn's hearing must include auditory brainstem responses, evoked otoacoustic emissions, or appropriate technology as approved by the FDA.[41]

NBHS staff provide follow-up to parents of infants who do not pass the newborn hearing screen to ensure timely diagnosis and enrollment in early intervention for children diagnosed with hearing loss.[42] A child who is diagnosed as having a permanent hearing impairment must be referred by the licensee or individual who conducted the screening to the primary care physician for medical management, treatment, and follow-up services. Furthermore, any child from birth to 36 months of age who is diagnosed as having a hearing impairment that requires ongoing special hearing services must be referred to the Children's Medical Services Early Intervention Program by the licensee or individual who conducted the screening serving the geographical area in which the child resides.

Hearing loss is one of the most common birth defects in the U.S., with approximately two newborns per 1,000 born having hearing loss each year. It is estimated that only half of early childhood hearing loss is detected through newborn hearing screening. To further support early identification of hearing loss prior to school entry to prevent the consequences of unidentified disorders, the federal Health Resources & Services Administration grants also require collection of hearing screening data for infants and toddlers up to age 36 months.[43]

Sickle Cell Disease

Sickle cell disease (SCD) affects approximately 100,000 Americans and is the most prevalent inherited blood disorder in the U.S.[44] SCD affects mostly, but not exclusively, persons of African ancestry. SCD is a group of inherited disorders in which abnormal hemoglobin cause red blood cells to buckle into a sickle shape. The deformed red blood cells damage blood vessels and over time contribute to a cascade of negative health effects beginning in infancy, such as intense vaso-occlusive pain episodes, strokes, organ failure, and recurrent infections.[45] The severity of complications generally worsens as people age, but treatment and prevention strategies can mitigate complications and lengthen the lives of people with SCD.[46]

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[40] Section 383.145(3)(f), F.S.
[41] Section 383.145(3)(i), F.S.
[42] Section 383.14, F.S.
[43] Section 383.14, F.S.
[44] National Institutes of Health ,National Heart, Lung, and Blood Institute, *What is Sickle Cell Disease?*, available at https://www.nhlbi.nih.gov/health/sickle-cell-disease (last visited Jan. 31, 2024).
[45] Centers for Disease Control and Prevention, *What is Sickle Cell Disease?* available at https://www.cdc.gov/ncbddd/sicklecell/facts.html (last visited Jan. 31, 2024). See also, AHCA (2023) *Florida Medicaid Study of Enrollees with Sickle Cell Disease*. available at https://ahca.myflorida.com/content/download/20771/file/Florida_Medicaid_Study_of_Enrollees_with_Sickle_Cell_Disease.pdf (last visited Jan., 2024).
[46] Centers for Disease Control and Prevention, *Complications of Sickle Cell Disease*. available at https://www.cdc.gov/ncbddd/sicklecell/complications.html (last visited Jan. 31, 2024).

A person who carries a single gene for SCD has sickle cell trait. People with sickle cell trait do not have SCD, and under normal conditions, they are generally asymptomatic. However, they are carriers of SCD and have an increased likelihood of having a child with SCD. It is estimated that eight to ten percent of African Americans carry sickle cell trait.[47]

While SCD is the most common inherited blood disorder in the U.S., and is often diagnosed at birth through newborn screening programs,[48] patients with SCD experience many of the other trials associated with treating a rare disease. Until recently there was very little research development in the areas of managing, treating, or curing SCD.[49]

The NBS Program has included screening for sickle cell disease since 1988.

Sickle Cell Disease Registry

In 2023, the DOH was required under s. 383.147, F.S., to contract with a community-based sickle cell disease medical treatment and research center to establish and maintain a registry for newborns and infants who are identified as carrying a sickle cell hemoglobin variant. If a screening provider detects that a newborn or an infant is carrying a sickle cell hemoglobin variant, it must notify the child's primary care physician and submit the results to the DOH for inclusion in the sickle cell registry. The registry must track sickle cell disease outcome measures. A parent or guardian of a newborn or an infant in the registry may request to have his or her child removed from the registry by submitting a form prescribed by the DOH in rule.

Based on a review of the 2022 provisional data, the DOH identified 137 newborns with SCD and 5,800 with sickle cell trait. For any newborn identified with sickle cell trait, notification letters are sent to both the family and physician on file for each newborn. NBS Program results are returned to the submitting provider. It is the responsibility of the submitting entity to forward the results to the newborn's primary care provider.[50]

Environmental Risk Screening

In 2022, 223,833 women gave birth in Florida.[51] Adverse birth outcomes, such as preterm birth and low birthweight, are major public health concerns due to the associated risks of morbidity

[47] American Society of Hematology. *ASH Position on Sickle Cell Trait* (2021). available at https://www.hematology.org/advocacy/policy-news-statements-testimony-and-correspondence/policy-statements/2021/ash-position-on-sickle-cell-trait (last visited Jan. 31, 2024).
[48] Centers for Disease Control and Prevention. *Newborn Screening (NBS) Data* (2023). available at https://www.cdc.gov/ncbddd/hemoglobinopathies/scdc-state-data/newborn-screening/index.html#:~:text=Newborn%20screening%20(NBS)%20for%20sickle,SCD%20living%20in%20a%20state. (last visited Jan. 31, 2024).
[49] *See*, American Society of Hematology. *ASH Sickle Cell Disease Initiative*. available at https://www.hematology.org/advocacy/sickle-cell-disease-initiative (last visited Jan. 31, 2024). See also Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).
[50] *Id.*
[51] FloridaHealthCHARTS: *Resident Live Births*, available at https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=BirthMonthly.Dataviewer&cid=25 (last visited Feb. 1, 2024).

and mortality throughout an individual's lifespan.[52,53] Risk assessment in pregnancy can assist with identifying pregnant women who are most likely to experience adverse health events and enables providers to administer risk-appropriate prenatal and postnatal care.[54] Research has also shown that the use of risk screening tools significantly reduces the risk of low birth weight, preterm birth, and fetal and infant morbidity.[55] Some researchers have found that the risk of low birth weight and preterm birth is reduced by as much as thirty percent in underserved communities when a risk screen is completed.[56]

The DOH develops and oversees the prenatal risk screening process to assess for environmental risk factors that put a pregnant woman at risk for a preterm birth or other high-risk condition. The prenatal risk screen is completed by the pregnant woman's healthcare provider at her first prenatal appointment. If the prenatal risk screen identifies a pregnant woman is at-risk, she is referred to home visiting services, and other services, as necessary, to improve prenatal and birth outcomes.

Medical Marijuana Treatment Centers (MMTC)

The DOH licenses MMTC's to ensure reasonable statewide access to medical use marijuana for registered patients.[57] Currently, to obtain a MMTC license the applicant must have been registered to do business in Florida for the previous five years.[58]

In 2017, when the Legislature first developed the regulatory structure for the medical use of marijuana and the licensing of MMTC's, the DOH was required to license 10 new MMTCs, which included one licensee that was a recognized class member of Pigford v. Glickman, or In Re Black Farmers Litig., and is a member of the Black Farmers and Agriculturalists Association-Florida Chapter.[59]

In 2023, the DOH was required to issue a license to any applicant who had applied for the single MMTC license that was set aside for class members of Pigford v. Glickman and In re Black Farmers Litig., and who cured application deficiencies within a specified time frame.[60]

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[52] Risnes KR, Vatten LJ, Baker JL, et al..*Birthweight and mortality in adulthood: A systematic review and meta-analysis, Int J Epidemiol* 2011;40:647–661, available at https://pubmed.ncbi.nlm.nih.gov/21324938/ (last visited Feb. 1, 2024).
[53] Raju TNK, Pemberton VL, Saigal S, et al.. *Long-Term Healthcare Outcomes Of Preterm Birth: An Executive Summary of a Conference Sponsored By The National Institutes of Health*. *J Pediatr* 2017;181:309–318.e1. available at https://pubmed.ncbi.nlm.nih.gov/27806833/ (last visited Feb. 1, 2024).
[54] Board on Children, Youth, and Families; Institute of Medicine; National Research Council. (2013). An Update on Research Issues in the Assessment of Birth Settings. *Workshop Summary. Washington (DC): National Academies Press (US)*., available at https://www.ncbi.nlm.nih.gov/books/NBK201935/ (last visited Feb. 1, 2024).
[55] Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).
[56] Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).
[57] Section 381.986(8), F.S.
[58] Section 381.986(8)(b), F.S.
[59] Chapter 2017-232, Laws of Fla.
[60] Chapter 2023-292, Laws of Fla.

Florida Cancer Control and Research Advisory Council.

The Florida Cancer Control and Research Advisory Council, is an advisory body appointed to function on a continuing basis for the study of cancer and which recommends solutions and policy alternatives to the Board of Governors and the State Surgeon General[61]

The council was created within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council consists of 15 members, which includes the chairperson, all of whom must be residents of this state. The State Surgeon General or his or her designee within the DOHealth must be one of the 15 members. Members, except those appointed by the Governor, the Speaker of the House of Representatives, or the President of the Senate, must be appointed by the chief executive officer of the institution or organization represented, or his or her designee. One member must be a representative of the American Cancer Society; one member must be a representative of the Sylvester Comprehensive Cancer Center of the University of Miami; one member must be a representative of the University of Florida Shands Cancer Center; one member must be a representative of the Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the council; one member must be a representative of the Florida Osteopathic Medical Association who specializes in the field of oncology; one member must be a member of the Florida Medical Association who specializes in the field of oncology and who represents a cancer center not already represented on the council; one member must be a representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; one member must be a member of the Florida Hospital Association who specializes in the field of oncology and who represents a comprehensive cancer center not already represented on the council; one member must be a representative of the Association of Community Cancer Centers; one member must specialize in pediatric oncology research or clinical care appointed by the Governor; one member must specialize in oncology clinical care or research appointed by the President of the Senate; one member must be a current or former cancer patient or a current or former caregiver to a cancer patient appointed by the Speaker of the House of Representatives; one member must be a member of the House of Representatives appointed by the Speaker of the House of Representatives; and one member must be a member of the Senate appointed by the President of the Senate. At least four of the members must be individuals who are minority persons.[62]

The council is responsible for including in the Florida Cancer Control and Research Plan recommendations for the coordination and integration of medical, nursing, paramedical, lay, and other plans concerned with cancer control and research. Committees shall be formed by the council so that the following areas will be established as entities for actions:[63]

- Cancer plan evaluation: tumor registry, data retrieval systems, and epidemiology of cancer in the state and its relation to other areas;
- Cancer prevention;
- Cancer detection;
- Cancer patient management: treatment, rehabilitation, terminal care, and other patient-oriented activities;

[61] Section 1004.435(3)(b), F.S.
[62] Section 1004.435(4)(a), F.S.
[63] Section 1004.435(4)(j), F.S.

- Cancer education: lay and professional;
- Unproven methods of cancer therapy: quackery and unorthodox therapies.
- Investigator-initiated project research.

Mayo Clinic in Jacksonville, Florida has recently received the designation as a Comprehensive Cancer Center and Cancer Center of Excellence Designation from the State of Florida.

III. Effect of Proposed Changes:

Section 1. Environmental Health Professionals

The bill amends s. 381.0101, F.S., to create a new profession, the environmental health technician (EHT). The bill provides that an EHT is a person employed or assigned the responsibility for conducting septic inspections under the supervision of a certified environmental health professional (CEHP). An EHT must have completed training approved by the DOH and have the knowledge, skills, and abilities to carry out these tasks.

The bill also creates an additional exemption to the certification requirements in s. 381.010(2), F.S., which require a bachelor's degree in science for EHTs employed by a department[64] who are assigned the responsibility of conducting septic tank inspections under the supervision of a CEHP in onsite sewage treatment and disposal.

The bill requires:

- The Department of Health (DOH), in conjunction with the Department of Environmental Protection (DEP), to adopt rules that establish definitions and minimum standards of education, training, and experience for the certification of EHTs, and the rules must address the following:
  - Education required;
  - Training required;
  - Experience necessary;
  - Application process;
  - Examinations to be taken;
  - Process of certification issuance;
  - Certification expiration;
  - Certification renewal; and
  - Ethical standards of practice for the profession.
- The DOH to establish standards for an EHT in the areas of onsite sewage treatment and disposal;
- A person conducting septic inspections must be certified by examination to be knowledgeable in the area of onsite sewage treatment and disposal;
- An applicant for certification as an EHT to have received a high school diploma or its equivalent;
- An applicant for certification as an EHT to be employed by a department;

[64] Section 20.03(8), F.S., defines "department" as the principal administrative unit within the executive branch of state government.

- An applicant for certification as an EHT to complete supervised field inspection work as prescribed by DOH rule before examination;
- A certified environmental health technician (CEHT) to renew his or her certification biennially by completing at least 24 contact hours of continuing education for each program area in which he or she maintains certification, subject to a maximum of 48 hours for multi-program certification; and
- A CEHT to notify the DOH within 60 days after any change of name or address from that which appears on the current certificate.

According to the DOH, an EHT could perform septic inspections, like a CEHP, but the technician would not be required to have a four-year college degree with certain scientific coursework to be eligible for this certification examination. Technicians would be required to complete an amount of observed field work set by rule, attain a passing score on the certification test, and meet any additional rule requirements. Regulatory work would include approving permits, and the technician's work would be subject to the supervision and approval of his or her supervising CEHP.[65]

Section 2. Andrew John Anderson Pediatric Rare Disease Grant Program

The bill creates the Andrew John Anderson Pediatric Rare Disease Grant Program within the DOH under s. 381.991, F.S. The purpose of the grant program is to advance the progress of research and cures for rare pediatric diseases by awarding grants through a competitive, peer-reviewed process. Subject to an annual appropriation by the Legislature, the program must award grants for scientific and clinical research to further the search for new diagnostics, treatments, and cures for rare pediatric diseases.

The bill requires that:

- Applications for the grants may be submitted by any university or established research institute in Florida and all qualified investigators, regardless of institutional affiliation, will have equal access and opportunity to compete for funding;
- The grants may be awarded by the DOH after consultation with the Rare Disease Advisory Council based on scientific merit, as determined by the competitive, peer-reviewed process to ensure objectivity, consistency, and high quality;
- The DOH must appoint peer review panels of independent, scientifically qualified individuals to review the scientific merit of each proposal and establish its priority score to ensure appropriate and fair evaluation of grant applications based on scientific merit;
- The priority scores must be forwarded to the council and must be considered in determining which proposals will be recommended for funding; and
- The council and the peer review panels must establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy about conflicts of interest.

The bill authorizes:

- The use of preferences for grant proposals that foster collaboration among institutions, researchers, and community practitioners, on the basis that such proposals support the

[65] Department of Health, 2024 Agency Legislative Bill Analysis, SB 1582 (Sept. 18, 2023) (on file with the Senate Committee on Health Policy).

advancement of treatments and cures for rare pediatric diseases through basic or applied research;
- The following types of applications to be considered for funding:
  - Investigator-initiated research grants;
  - Institutional research grants; and
  - Collaborative research grants, including those that advance the finding of treatment and cures through basic or applied research.
- The balance of any Legislative appropriation for the Grant Program that is not disbursed, but is obligated pursuant to contract or committed to be expended by June 30 of the fiscal year in which the funds were appropriated, to be carried forward for up to five years after the effective date of the original appropriation.

The bill prohibits any council or panel member from participating in any discussion or decision of the council or panel concerning a research proposal by any firm, entity, or agency that the member is associated with as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.

Section 3. Newborn Metabolic Screening Program

The bill amends s. 383.14, F.S., to require that any health care practitioner present at a birth or responsible for primary care during the neonatal period has the primary responsibility of administering newborn screenings as required in ss. 383.14 and 383.145, F.S. The bill defines the term "health care practitioner" to mean physicians or physician assistants (PAs) licensed under ch. 458, F.S., or ch. 459, F.S., advanced practice registered nurses (APRNs) licensed under ch. 464, F.S, and a midwife licensed under ch. 467, F.S., and requires those practitioners to prepare and send all newborn screening specimen cards to the State Public Health Laboratory.

The bill removes language related to risk screening for environmental risk factors from s. 383.14, F.S., and relocates it to s. 383.148, F.S., later in the bill (Section 6). The bill also repeals the following:
- Obsolete requirement for the Office of Inspector General to certify financial operations of the NBS program;
- Obsolete requirement for the NBS Program and Healthy Start to coordinate with the Florida Department of Education (DOE) for consultation; and
- Language referencing the initial newborn screening condition (phenylketonuria) and multiple other screening methods to allow the NBS Program to apply principles to all conditions on the NBS Program screening panel.

The bill authorizes:
- Licensed genetic counselors to receive NBS Program results, which will improve the coordination of services provided to infants and their families; and
- The NBS Program to implement systemic improvements for diagnostic reporting and submission of NBS Program specimens and point of contact screening results.

Section 4. Newborn Hearing Screening

The bill amends s. 383,145, F.S., to add the definition of "toddler" to mean a child from 12 months to 36 months of age. The bill requires that:

- Both infants and toddlers are added to the hearing screening program when a treating physician orders a hearing screening which must include auditory brainstem responses, or evoked otoacoustic emissions, or appropriate technology as approved by the FDA;
- All licensed birth centers that provide maternity and newborn care services must ensure that all newborns are, before discharge, screened for the detection of hearing loss and that within seven days after the birth, the licensed birth center must ensure that all newborns who do not pass the hearing screening are referred for an appointment for a test to screen for congenital cytomegalovirus (CMV) before the newborn becomes 21 days of age; and
- For home births, the newborn's primary health care provider must refer the newborn for administration of a test approved by the FDA or another diagnostically equivalent test on the newborn to screen for congenital CMV before the newborn becomes 21 days of age.

Section 5. Sickle Cell Disease Registry

The bill amends s. 383.147, F.S., to provide that:

- If a newborn is identified as having sickle cell disease or carrying a sickle cell trait through the NBS Program, the results will be included in the statewide SCD registry unless the parent or guardian provides an opt-out form obtained from the DOH, or otherwise indicates in writing of his or her objection to having the newborn included in the registry; and
- Persons living in this state who have been identified as having sickle cell disease or carrying a sickle cell trait may choose to be included in the registry by providing the DOH with notification as prescribed by rule.

Section 6. Environmental Risk Screening

The bill creates s. 383.148, F.S., to house the DOH's requirements relating to screening pregnant women and infants in this state for environmental risk factors, which are being relocated from s. 383.14, F.S.

Section 7. The Florida Cancer Control and Research Advisory Council (CCRAB)

The bill increases the number of members on the CCRAB from 15 to 16 and requires the additional member to be a representative of the Mayo Clinic in Jacksonville. The bill also provides that nine members, instead of eight, constitute a quorum for the purpose of exercising all of the powers of the council.

Sections 8-10 amend ss. 383.318, 395.1053, and 456.0496, F.S., to make conforming cross-reference changes.

Section 11 creates an undesignated section of the Laws of Florida to open another 90-day window for applicants who applied for the MMTC license set aside for class members of Pigford v. Glickman and In re. Black Farmers Litg. to cure any deficiencies with their application. If the applicant can cure the deficiencies within 90 days, the DOH must grant the applicant a MMTC

license. The bill requires the DOH to grant the license even if the applicant's sole remaining deficiency is not meeting the 5-year Florida business requirement established in s. 381-986, F.S. Additionally, the death of an applicant who was alive as of Feb. 1, 2024, is not a reason to deny the applicant during the cure period and any subsequent challenges.

The bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Health, the bill does not have a fiscal impact on state expenditures. The Pediatric Rare Disease Research Grant Program is currently funded at $500,000. This funding is used exclusively for research grants. To ensure the proper evaluation of the research grants, the bill requires peer reviewers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A child's sickle cell disease (SCD) test results are required to be automatically included in the statewide SCD registry under current law. On lines 667-683, the bill allows a parent or guardian to opt-out of having a child's SCD test results included in the registry by submitting an opt-out form "obtained from the department" or by otherwise indicating in writing to the Department of Health of his or her objections to having the child included in the registry. However, there is no requirement in the opt-out procedure created by the bill for the parent or guardian to be informed of the existence of the opt-out form or of his or her ability to opt-out.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.0101, 383.14, 383.145, 383.147, 383.318, 395.1053, 456.0496, and 1004.435.

This bill creates the following sections of the Florida Statutes: 381.991 and 383.148.

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 Fiscal Policy on February 27, 2024:
The CS increases the number of members on the CCRAB from 15 to 16 and requires the additional member to be a representative of the Mayo Clinic in Jacksonville. The CS also provides that nine members, instead of eight, constitute a quorum for the purpose of exercising all of the powers of the council.

CS/CS by Appropriations Committee on Health and Human Services on February 20, 2024:
The committee substitute:

- Re-names the program the "Andrew John Anderson Pediatric Rare Disease Grant Program," previous versions were named the "Andrew John Anderson Rare Pediatric Disease Grant Program."
- Creates an undesignated section of the Laws of Florida, to allow certain applicants for licensure as a Medical Marijuana Treatment Center (MMTC) 90 days to cure application deficiencies and requires the Department of Health to issue an MMTC license if those deficiencies are cured. The amendment also exempts these applicants from the five-year business requirement established in s. 381.986, F.S.

CS by Health Policy on February 6, 2024:
The committee substitute removes the Telehealth Minority Maternity Care Program from the bill.

B. Amendments:

None.

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

922552

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 755 and 756
insert:

Section 7. Paragraphs (a) and (d) of subsection (4) of section 1004.435, Florida Statutes, are amended to read:

1004.435 Cancer control and research.—

(4) FLORIDA CANCER CONTROL AND RESEARCH ADVISORY COUNCIL; CREATION; COMPOSITION.—

(a) There is created within the H. Lee Moffitt Cancer

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Center and Research Institute, Inc., the Florida Cancer Control and Research Advisory Council. The council shall consist of 16 ~~15~~ members, which includes the chairperson, all of whom must be residents of this state. The State Surgeon General or his or her designee within the Department of Health shall be one of the 16 ~~15~~ members. Members, except those appointed by the Governor, the Speaker of the House of Representatives, or the President of the Senate, must be appointed by the chief executive officer of the institution or organization represented, or his or her designee. One member must be a representative of the American Cancer Society; one member must be a representative of the Sylvester Comprehensive Cancer Center of the University of Miami; one member must be a representative of the University of Florida Shands Cancer Center; one member must be a representative of the Florida Nurses Association who specializes in the field of oncology and is not from an institution or organization already represented on the council; one member must be a representative of the Florida Osteopathic Medical Association who specializes in the field of oncology; one member must be a member of the Florida Medical Association who specializes in the field of oncology and who represents a cancer center not already represented on the council; one member must be a representative of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; one member must be a representative of the Mayo Clinic in Jacksonville; one member must be a member of the Florida Hospital Association who specializes in the field of oncology and who represents a comprehensive cancer center not already represented on the council; one member must be a representative of the Association of Community Cancer Centers; one member must

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specialize in pediatric oncology research or clinical care appointed by the Governor; one member must specialize in oncology clinical care or research appointed by the President of the Senate; one member must be a current or former cancer patient or a current or former caregiver to a cancer patient appointed by the Speaker of the House of Representatives; one member must be a member of the House of Representatives appointed by the Speaker of the House of Representatives; and one member must be a member of the Senate appointed by the President of the Senate. At least four of the members must be individuals who are minority persons as defined by s. 288.703.

(d) The council shall meet no less than semiannually at the call of the chairperson or, in his or her absence or incapacity, at the call of the State Surgeon General. Nine ~~Eight~~ members constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present is sufficient for all actions of the council.

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

And the title is amended as follows:

Delete line 86

and insert:

screening; amending s. 1004.435, F.S.; revising the membership of the Florida Cancer Control and Research Advisory Council; revising quorum requirements for council actions; amending ss. 383.318, 395.1053, and

By the Appropriations Committee on Health and Human Services; the Committee on Health Policy; and Senator Rodriguez

603-03531-24 20241582c2

A bill to be entitled

An act relating to the Department of Health; amending s. 381.0101, F.S.; defining the term "environmental health technician"; exempting environmental health technicians from certain certification requirements under certain circumstances; requiring the department, in conjunction with the Department of Environmental Protection, to adopt rules that establish certain standards for environmental health technician certification; requiring the Department of Health to adopt by rule certain standards for environmental health technician certification; revising provisions related to exemptions and fees to conform to changes made by the act; creating s. 381.991, F.S.; creating the Andrew John Anderson Pediatric Rare Disease Grant Program within the department for a specified purpose; subject to an appropriation by the Legislature, requiring the program to award grants for certain scientific and clinical research; specifying entities eligible to apply for the grants; specifying the types of applications that may be considered for grant funding; providing for a competitive, peer-reviewed application and selection process; providing that the remaining balance of appropriations for the program as of a specified date may be carried forward for a specified timeframe under certain circumstances; amending s. 383.14, F.S.; providing that any health care practitioner present at a birth or responsible for primary care during the neonatal period has the

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primary responsibility of administering certain screenings; defining the term "health care practitioner"; deleting identification and screening requirements for newborns and their families for certain environmental and health risk factors; deleting certain related duties of the department; revising the definition of the term "health care practitioner" to include licensed genetic counselors; requiring that blood specimens for screenings of newborns be collected before a specified age; requiring that newborns have a blood specimen collected for newborn screenings, rather than only a test for phenylketonuria, before a specified age; deleting certain rulemaking authority of the department; deleting a requirement that the department furnish certain forms to specified entities; deleting the requirement that such entities report the results of certain screenings to the department; making technical and conforming changes; deleting a requirement that the department submit certain certifications as part of its legislative budget request; requiring certain health care practitioners to prepare and send all newborn screening specimen cards to the State Public Health Laboratory; defining the term "health care practitioner"; amending s. 383.145, F.S.; defining the term "toddler"; revising hearing loss screening requirements to include infants and toddlers; revising hearing loss screening requirements for licensed birth centers; revising the

timeframe in which a newborn's primary health care provider must refer a newborn for congenital cytomegalovirus screening after the newborn fails the hearing loss screening; requiring licensed birth centers to complete newborn hearing loss screenings before discharge, with an exception; amending s. 383.147, F.S.; revising sickle cell disease and sickle cell trait screening requirements; requiring screening providers to notify a newborn's parent or guardian, rather than the newborn's primary care physician, of certain information; authorizing the parents or guardians of a newborn to opt out of the newborn's inclusion in the sickle cell registry; specifying the manner in which a parent or guardian may opt out; authorizing certain persons other than newborns who have been identified as having sickle cell disease or carrying a sickle cell trait to choose to be included in the registry; creating s. 383.148, F.S.; requiring the department to promote the screening of pregnant women and infants for specified environmental risk factors; requiring the department to develop a multilevel screening process for prenatal and postnatal risk screenings; specifying requirements for such screening processes; providing construction; requiring persons who object to a screening to give a written statement of such objection to the physician or other person required to administer and report the screening; amending ss. 383.318, 395.1053, and 456.0496, F.S.; conforming cross-references; requiring

the department to grant certain applicants 90 days to cure deficiencies with their medical marijuana treatment center license applications pursuant to a specified errors and omissions process; requiring the department to grant such applicants a marijuana treatment center license if they cure the deficiencies within the specified timeframe; providing construction; providing that the death of an applicant during the cure process may not be a reason to deny the application or any resulting legal challenge; requiring the department to issue the license to the estate of a deceased applicant in the event of a successful cure or legal challenge; providing effective dates.

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

Section 1. Present subsections (5), (6), and (7) of section 381.0101, Florida Statutes, are redesignated as subsections (6), (7), and (8), respectively, a new subsection (5) is added to that section, and subsections (1), (2), and (4) and present subsections (5) and (6) of that section are amended, to read:

381.0101 Environmental health professionals.—

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

(a) "Board" means the Environmental Health Professionals Advisory Board.

(c) ~~(b)~~ "Department" means the Department of Health.

(d) ~~(c)~~ "Environmental health" means that segment of public health work which deals with the examination of those factors in

the human environment which may impact adversely on the health status of an individual or the public.

(e) ~~(d)~~ "Environmental health professional" means a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members.

(b) ~~(c)~~ "Certified" means a person who has displayed competency to perform evaluations of environmental or sanitary conditions through examination.

(f) "Environmental health technician" means a person who is employed or assigned the responsibility for conducting septic inspections under the supervision of a certified environmental health professional. An environmental health technician must have completed training approved by the department and have the knowledge, skills, and abilities to carry out these tasks.

(h) ~~(f)~~ "Registered sanitarian," "R.S.," "Registered Environmental Health Specialist," or "R.E.H.S." means a person who has been certified by either the National Environmental Health Association or the Florida Environmental Health Association as knowledgeable in the environmental health profession.

(g) "Primary environmental health program" means those programs determined by the department to be essential for providing basic environmental and sanitary protection to the public. At a minimum, these programs shall include food

protection program work.

(2) CERTIFICATION; EXEMPTIONS ~~REQUIRED~~.—A person may not perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the department as competent to perform such evaluations. This section does not apply to any of the following:

(a) Persons performing inspections of public food service establishments licensed under chapter 509.~~; or~~

(b) Persons performing site evaluations in order to determine proper placement and installation of onsite wastewater treatment and disposal systems who have successfully completed a department-approved soils morphology course and who are working under the direct responsible charge of an engineer licensed under chapter 471.

(c) Environmental health technicians employed by a department as defined in s. 20.03 who are assigned the responsibility for conducting septic tank inspections under the supervision of an environmental health professional certified in onsite sewage treatment and disposal.

(4) STANDARDS FOR CERTIFICATION.—The department shall adopt rules that establish definitions of terms and minimum standards of education, training, or experience for those persons subject to this subsection ~~section~~. The rules must also address the process for application, examination, issuance, expiration, and renewal of certification and ethical standards of practice for the profession.

(a) Persons employed as environmental health professionals shall exhibit a knowledge of rules and principles of

environmental and public health law in Florida through examination. A person may not conduct environmental health evaluations in a primary program area unless he or she is currently certified in that program area or works under the direct supervision of a certified environmental health professional.

1. All persons who begin employment in a primary environmental health program on or after September 21, 1994, must be certified in that program within 6 months after employment.

2. Persons employed in the primary environmental health program of a food protection program or an onsite sewage treatment and disposal system prior to September 21, 1994, shall be considered certified while employed in that position and shall be required to adhere to any professional standards established by the department pursuant to paragraph (b), complete any continuing education requirements imposed under paragraph (d), and pay the certificate renewal fee imposed under subsection (7) ~~(6)~~.

3. Persons employed in the primary environmental health program of a food protection program or an onsite sewage treatment and disposal system prior to September 21, 1994, who change positions or program areas and transfer into another primary environmental health program area on or after September 21, 1994, must be certified in that program within 6 months after such transfer, except that they will not be required to possess the college degree required under paragraph (e).

4. Registered sanitarians shall be considered certified and shall be required to adhere to any professional standards

established by the department pursuant to paragraph (b).

(b) At a minimum, the department shall establish standards for professionals in the areas of food hygiene and onsite sewage treatment and disposal.

(c) Those persons conducting primary environmental health evaluations shall be certified by examination to be knowledgeable in any primary area of environmental health in which they are routinely assigned duties.

(d) Persons who are certified shall renew their certification biennially by completing not less than 24 contact hours of continuing education for each program area in which they maintain certification, subject to a maximum of 48 hours for multiprogram certification.

(e) Applicants for certification shall have graduated from an accredited 4-year college or university with a degree or major coursework in public health, environmental health, environmental science, or a physical or biological science.

(f) A certificateholder shall notify the department within 60 days after any change of name or address from that which appears on the current certificate.

(5) STANDARDS FOR ENVIRONMENTAL HEALTH TECHNICIAN CERTIFICATION.—The department, in conjunction with the Department of Environmental Protection, shall adopt rules that establish definitions of terms and minimum standards of education, training, and experience for those persons subject to this subsection. The rules must also address the process for application, examination, issuance, expiration, and renewal of certification, and ethical standards of practice for the profession.

(a) At a minimum, the department shall establish standards for technicians in the areas of onsite sewage treatment and disposal.

(b) A person conducting septic inspections must be certified by examination to be knowledgeable in the area of onsite sewage treatment and disposal.

(c) An applicant for certification as an environmental health technician must, at a minimum, have received a high school diploma or its equivalent.

(d) An applicant for certification as an environmental health technician must be employed by a department as defined in s. 20.30.

(e) An applicant for certification as an environmental health technician must complete supervised field inspection work as prescribed by department rule before examination.

(f) A certified environmental health technician must renew his or her certification biennially by completing at least 24 contact hours of continuing education for each program area in which he or she maintains certification, subject to a maximum of 48 hours for multiprogram certification.

(g) A certified environmental health technician shall notify the department within 60 days after any change of name or address from that which appears on the current certificate.

(6)~~(5)~~ EXEMPTIONS.—A person who conducts primary environmental evaluation activities and maintains a current registration or certification from another state agency which examined the person's knowledge of the primary program area and requires comparable continuing education to maintain the certificate shall not be required to be certified by this

section. ~~Examples of persons not subject to certification are physicians, registered dietitians, certified laboratory personnel, and nurses.~~

(7)~~(6)~~ FEES.—The department shall charge fees in amounts necessary to meet the cost of providing environmental health professional certification. Fees for certification shall be not less than $10 or more than $300 and shall be set by rule. Application, examination, and certification costs shall be included in this fee. Fees for renewal of a certificate shall be no less than $25 nor more than $150 per biennium.

Section 2. Section 381.991, Florida Statutes, is created to read:

381.991 Andrew John Anderson Pediatric Rare Disease Grant Program.—

(1)(a) There is created within the Department of Health the Andrew John Anderson Pediatric Rare Disease Grant Program. The purpose of the program is to advance the progress of research and cures for pediatric rare diseases by awarding grants through a competitive, peer-reviewed process.

(b) Subject to an annual appropriation by the Legislature, the program shall award grants for scientific and clinical research to further the search for new diagnostics, treatments, and cures for pediatric rare diseases.

(2)(a) Applications for grants for pediatric rare disease research may be submitted by any university or established research institute in the state. All qualified investigators in the state, regardless of institutional affiliation, shall have equal access and opportunity to compete for the research funding. Preference may be given to grant proposals that foster

collaboration among institutions, researchers, and community practitioners, as such proposals support the advancement of treatments and cures of pediatric rare diseases through basic or applied research. Grants shall be awarded by the department, after consultation with the Rare Disease Advisory Council, pursuant to s. 381.99, on the basis of scientific merit, as determined by the competitive, peer-reviewed process to ensure objectivity, consistency, and high quality. The following types of applications may be considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

3. Collaborative research grants, including those that advance the finding of treatment and cures through basic or applied research.

(b) To ensure appropriate and fair evaluation of grant applications based on scientific merit, the department shall appoint peer review panels of independent, scientifically qualified individuals to review the scientific merit of each proposal and establish its priority score. The priority scores shall be forwarded to the council and must be considered in determining which proposals shall be recommended for funding.

(c) The council and the peer review panels shall establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflicts of interest. A member of the council or panel may not participate in any discussion or decision of the council or panel with respect to a research proposal by any firm, entity, or agency that the member is associated with as a member of the governing body or as an employee or with which the member has entered into a contractual

arrangement.

(d) Notwithstanding s. 216.301 and pursuant to s. 216.351, the balance of any appropriation from the General Revenue Fund for the Andrew John Anderson Pediatric Rare Disease Grant Program that is not disbursed but that is obligated pursuant to contract or committed to be expended by June 30 of the fiscal year in which the funds are appropriated may be carried forward for up to 5 years after the effective date of the original appropriation.

Section 3. Present subsection (5) of section 383.14, Florida Statutes, is redesignated as subsection (6), a new subsection (5) is added to that section, and subsections (1), (2), and (3) of that section are amended, to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the maternal and child health care system, the Department of Health shall promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. Any health care practitioner present at a birth or responsible for primary care during the neonatal period has the primary responsibility of administering screenings as required in ss. 383.14 and 383.145. As used in this subsection, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, an advanced practice registered nurse

licensed under part I of chapter 464, or a midwife licensed under chapter 467 ~~The department shall also promote the identification and screening of all newborns in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care provider. Such efforts shall be conducted in hospitals, perinatal centers, county health departments, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.~~

~~(a) *Prenatal screening.*—The department shall develop a multilevel screening process that includes a risk assessment instrument to identify women at risk for a preterm birth or other high-risk condition. The primary health care provider shall complete the risk assessment instrument and report the results to the Office of Vital Statistics so that the woman may immediately be notified and referred to appropriate health, education, and social services.~~

~~(b) *Postnatal screening.*—A risk factor analysis using the department's designated risk assessment instrument shall also be conducted as part of the medical screening process upon the birth of a child and submitted to the department's Office of~~

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~~Vital Statistics for recording and other purposes provided for in this chapter. The department's screening process for risk assessment shall include a scoring mechanism and procedures that establish thresholds for notification, further assessment, referral, and eligibility for services by professionals or paraprofessionals consistent with the level of risk. Procedures for developing and using the screening instrument, notification, referral, and care coordination services, reporting requirements, management information, and maintenance of a computer-driven registry in the Office of Vital Statistics which ensures privacy safeguards must be consistent with the provisions and plans established under chapter 411, Pub. L. No. 99-457, and this chapter. Procedures established for reporting information and maintaining a confidential registry must include a mechanism for a centralized information depository at the state and county levels. The department shall coordinate with existing risk assessment systems and information registries. The department must ensure, to the maximum extent possible, that the screening information registry is integrated with the department's automated data systems, including the Florida On-line Recipient Integrated Data Access (FLORIDA) system~~.

(a) *Blood specimens for newborn screenings.*—Newborn ~~Tests and~~ screenings must be performed by the State Public Health Laboratory, in coordination with Children's Medical Services, at such times and in such manner as is prescribed by the department after consultation with the Genetics and Newborn Screening Advisory Council ~~and the Department of Education~~.

(b) ~~(c)~~ *Release of screening results.*—Notwithstanding any law to the contrary, the State Public Health Laboratory may

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release, directly or through the Children's Medical Services program, the results of a newborn's ~~hearing and metabolic tests or~~ screenings to the newborn's health care practitioner, the newborn's parent or legal guardian, the newborn's personal representative, or a person designated by the newborn's parent or legal guardian. As used in this paragraph, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458; an osteopathic physician or physician assistant licensed under chapter 459; an advanced practice registered nurse, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a midwife licensed under chapter 467; a speech-language pathologist or audiologist licensed under part I of chapter 468; ~~or~~ a dietician or nutritionist licensed under part X of chapter 468; or a genetic counselor licensed under part III of chapter 483.

(2) RULES.—

(a) After consultation with the Genetics and Newborn Screening Advisory Council, the department shall adopt and enforce rules requiring that every newborn in this state shall:

1. Before becoming 1 week of age, have a blood specimen collected for newborn screenings ~~be subjected to a test for phenylketonuria~~;

2. Be tested for any condition included on the federal Recommended Uniform Screening Panel which the council advises the department should be included under the state's screening program. After the council recommends that a condition be included, the department shall submit a legislative budget request to seek an appropriation to add testing of the condition to the newborn screening program. The department shall expand

statewide screening of newborns to include screening for such conditions within 18 months after the council renders such advice, if a test approved by the United States Food and Drug Administration or a test offered by an alternative vendor is available. If such a test is not available within 18 months after the council makes its recommendation, the department shall implement such screening as soon as a test offered by the United States Food and Drug Administration or by an alternative vendor is available; and

3. At the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary ~~from time to time~~.

~~(b) After consultation with the Department of Education, the department shall adopt and enforce rules requiring every newborn in this state to be screened for environmental risk factors that place children and their families at risk for increased morbidity, mortality, and other negative outcomes.~~

(b) ~~(c)~~ The department shall adopt such additional rules as are found necessary for the administration of this section and ss. 383.145 and 383.148 ~~s. 383.145~~, including rules providing definitions of terms, rules relating to the methods used and time or times for testing as accepted medical practice indicates, rules relating to charging and collecting fees for the administration of the newborn screening program authorized by this section, rules for processing requests and releasing test and screening results, and rules requiring mandatory reporting of the results of tests and screenings for these conditions to the department.

(3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department

shall administer and provide certain services to implement the provisions of this section and shall:

(a) Assure the availability and quality of the necessary laboratory tests and materials.

(b) ~~Furnish all physicians, county health departments, perinatal centers, birthing centers, and hospitals forms on which environmental screening and the results of tests for phenylketonuria and such other disorders for which testing may be required from time to time shall be reported to the department.~~

~~(c)~~ Promote education of the public about the prevention and management of metabolic, hereditary, and congenital disorders ~~and dangers associated with environmental risk factors~~.

(c) ~~(d)~~ Maintain a confidential registry of cases, including information of importance for the purpose of follow-up ~~followup~~ services to prevent intellectual disabilities, to correct or ameliorate physical disabilities, and for epidemiologic studies, if indicated. Such registry shall be exempt from the provisions of s. 119.07(1).

(d) ~~(e)~~ Supply the necessary dietary treatment products where practicable for diagnosed cases of ~~phenylketonuria and other~~ metabolic diseases for as long as medically indicated when the products are not otherwise available. Provide nutrition education and supplemental foods to those families eligible for the Special Supplemental Nutrition Program for Women, Infants, and Children as provided in s. 383.011.

(e) ~~(f)~~ Promote the availability of genetic studies, services, and counseling in order that the parents, siblings,

and affected newborns may benefit from detection and available knowledge of the condition.

(f) ~~(g)~~ Have the authority to charge and collect fees for the administration of the newborn screening program. ~~authorized in this section, as follows:~~

~~1.~~ A fee not to exceed $15 will be charged for each live birth, as recorded by the Office of Vital Statistics, occurring in a hospital licensed under part I of chapter 395 or a birth center licensed under s. 383.305 ~~per year~~. The department shall calculate the ~~annual~~ assessment for each hospital and birth center, and this assessment must be paid ~~in equal amounts~~ quarterly. ~~Quarterly,~~ The department shall generate and issue ~~mail to~~ each hospital and birth center a statement of the amount due.

~~2. As part of the department's legislative budget request prepared pursuant to chapter 216, the department shall submit a certification by the department's inspector general, or the director of auditing within the inspector general's office, of the annual costs of the uniform testing and reporting procedures of the newborn screening program. In certifying the annual costs, the department's inspector general or the director of auditing within the inspector general's office shall calculate the direct costs of the uniform testing and reporting procedures, including applicable administrative costs. Administrative costs shall be limited to those department costs which are reasonably and directly associated with the administration of the uniform testing and reporting procedures of the newborn screening program.~~

(g) ~~(h)~~ Have the authority to bill third-party payors for

newborn screening tests.

(h) ~~(i)~~ Create and make available electronically a pamphlet with information on screening for, and the treatment of, preventable infant and childhood eye and vision disorders, including, but not limited to, retinoblastoma and amblyopia.

All provisions of this subsection must be coordinated with the provisions and plans established under this chapter, chapter 411, and Pub. L. No. 99-457.

(5) SUBMISSION OF NEWBORN SCREENING SPECIMEN CARDS.—Any health care practitioner whose duty it is to administer screenings under this section shall prepare and send all newborn screening specimen cards to the State Public Health Laboratory in accordance with rules adopted under this section. As used in this subsection, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458, an osteopathic physician or physician assistant licensed under chapter 459, an advanced practice registered nurse licensed under part I of chapter 464, or a midwife licensed under chapter 467.

Section 4. Paragraph (k) is added to subsection (2) of Section 383.145, Florida Statutes, and subsection (3) of that section is amended, to read:

383.145 Newborn, ~~and~~ infant, and toddler hearing screening.—

(2) DEFINITIONS.—As used in this section, the term:

(k) "Toddler" means a child from 12 months to 36 months of age.

(3) REQUIREMENTS FOR SCREENING OF NEWBORNS, INFANTS, AND

TODDLERS; INSURANCE COVERAGE; REFERRAL FOR ONGOING SERVICES.—

(a) Each hospital or other state-licensed birth ~~birthing~~ facility that provides maternity and newborn care services shall ensure that all newborns are, before discharge, screened for the detection of hearing loss to prevent the consequences of unidentified disorders. If a newborn fails the screening for the detection of hearing loss, the hospital or other state-licensed birth ~~birthing~~ facility must administer a test approved by the United States Food and Drug Administration or another diagnostically equivalent test on the newborn to screen for congenital cytomegalovirus before the newborn becomes 21 days of age or before discharge, whichever occurs earlier.

(b) Each licensed birth center that provides maternity and newborn care services shall ensure that all newborns are, before discharge, screened for the detection of hearing loss. Within 7 days after the birth, the licensed birth center must ensure that all newborns who do not pass the hearing screening are referred for ~~to~~ an appointment ~~audiologist, a hospital, or another newborn hearing screening provider~~ for a test to screen for congenital cytomegalovirus before the newborn becomes 21 days of age ~~screening for the detection of hearing loss to prevent the consequences of unidentified disorders. The referral for appointment must be made within 7 days after discharge~~. Written documentation of the referral must be placed in the newborn's medical chart.

(c) If the parent or legal guardian of the newborn objects to the screening, the screening must not be completed. In such case, the physician, midwife, or other person attending the newborn shall maintain a record that the screening has not been

performed and attach a written objection that must be signed by the parent or guardian.

(d) For home births, the health care provider in attendance is responsible for coordination and referral to an audiologist, a hospital, or another newborn hearing screening provider. The health care provider in attendance must make the referral for appointment within 7 days after the birth. In cases in which the home birth is not attended by a health care provider, the newborn's primary health care provider is responsible for coordinating the referral.

(e) For home births and births in a licensed birth center, if a newborn is referred to a newborn hearing screening provider and the newborn fails the screening for the detection of hearing loss, the newborn's primary health care provider must refer the newborn for administration of a test approved by the United States Food and Drug Administration or another diagnostically equivalent test on the newborn to screen for congenital cytomegalovirus before the newborn becomes 21 days of age.

(f) All newborn and infant hearing screenings must be conducted by an audiologist, a physician, or an appropriately supervised individual who has completed documented training specifically for newborn hearing screening. Every hospital that provides maternity or newborn care services shall obtain the services of an audiologist, a physician, or another newborn hearing screening provider, through employment or contract or written memorandum of understanding, for the purposes of appropriate staff training, screening program supervision, monitoring the scoring and interpretation of test results, rendering of appropriate recommendations, and coordination of

appropriate follow-up services. Appropriate documentation of the screening completion, results, interpretation, and recommendations must be placed in the medical record within 24 hours after completion of the screening procedure.

(g) The screening of a newborn's hearing must be completed before the newborn is discharged from the hospital or licensed birth center. However, if the screening is not completed before discharge due to scheduling or temporary staffing limitations, the screening must be completed within 21 days after the birth. Screenings completed after discharge or performed because of initial screening failure must be completed by an audiologist, a physician, a hospital, or another newborn hearing screening provider.

(h) Each hospital shall formally designate a lead physician responsible for programmatic oversight for newborn hearing screening. Each birth center shall designate a licensed health care provider to provide such programmatic oversight and to ensure that the appropriate referrals are being completed.

(i) When ordered by the treating physician, screening of a newborn's, infant's, or toddler's hearing must include auditory brainstem responses, or evoked otoacoustic emissions, or appropriate technology as approved by the United States Food and Drug Administration.

(j) The results of any test conducted pursuant to this section, including, but not limited to, newborn hearing loss screening, congenital cytomegalovirus testing, and any related diagnostic testing, must be reported to the department within 7 days after receipt of such results.

(k) The initial procedure for screening the hearing of the

newborn or infant and any medically necessary follow-up reevaluations leading to diagnosis shall be a covered benefit for Medicaid patients covered by a fee-for-service program. For Medicaid patients enrolled in HMOs, providers shall be reimbursed directly by the Medicaid Program Office at the Medicaid rate. This service may not be considered a covered service for the purposes of establishing the payment rate for Medicaid HMOs. All health insurance policies and health maintenance organizations as provided under ss. 627.6416, 627.6579, and 641.31(30), except for supplemental policies that only provide coverage for specific diseases, hospital indemnity, or Medicare supplement, or to the supplemental policies, shall compensate providers for the covered benefit at the contracted rate. Nonhospital-based providers are eligible to bill Medicaid for the professional and technical component of each procedure code.

(l) A child who is diagnosed as having permanent hearing loss must be referred to the primary care physician for medical management, treatment, and follow-up services. Furthermore, in accordance with Part C of the Individuals with Disabilities Education Act, Pub. L. No. 108-446, Infants and Toddlers with Disabilities, any child from birth to 36 months of age who is diagnosed as having hearing loss that requires ongoing special hearing services must be referred to the Children's Medical Services Early Intervention Program serving the geographical area in which the child resides.

Section 5. Section 383.147, Florida Statutes, is amended to read:

383.147 ~~Newborn and infant screenings for~~ Sickle cell

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

disease and sickle cell trait ~~hemoglobin variants;~~ registry.—

(1) If ~~a screening provider detects that~~ a newborn as ~~or an infant, as those terms are~~ defined in s. 383.145(2)~~,~~ is identified as having sickle cell disease or carrying a sickle cell trait through the newborn screening program as described in s. 383.14, the department ~~hemoglobin variant, it~~ must:

(a) Notify the parent or guardian of the newborn and provide information regarding the availability and benefits of genetic counseling. ~~primary care physician of the newborn or infant and~~

(b) Submit the results of such screening ~~to the Department of Health~~ for inclusion in the sickle cell registry established under paragraph (2)(a), unless the parent or guardian of the newborn provides an opt-out form obtained from the department, or otherwise indicates in writing to the department his or her objection to having the newborn included in the sickle cell registry. ~~The primary care physician must provide to the parent or guardian of the newborn or infant information regarding the availability and benefits of genetic counseling.~~

(2)(a) The Department of Health shall contract with a community-based sickle cell disease medical treatment and research center to establish and maintain a registry for individuals ~~newborns and infants~~ who are identified as having sickle cell disease or carrying a sickle cell trait ~~hemoglobin variant~~. The sickle cell registry must track sickle cell disease outcome measures, except as provided in paragraph (1)(b). ~~A parent or guardian of a newborn or an infant in the registry may request to have his or her child removed from the registry by submitting a form prescribed by the department by rule.~~

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

(b) In addition to newborns identified and included in the registry under subsection (1), persons living in this state who have been identified as having sickle cell disease or carrying a sickle cell trait may choose to be included in the registry by providing the department with notification as prescribed by rule.

(c) The Department of Health shall also establish a system to ensure that the community-based sickle cell disease medical treatment and research center notifies the parent or guardian of a child who has been included in the registry that a follow-up consultation with a physician is recommended. Such notice must be provided to the parent or guardian of such child at least once during early adolescence and once during late adolescence. The department shall make every reasonable effort to notify persons included in the registry who are 18 years of age that they may request to be removed from the registry by submitting a form prescribed by the department by rule. The department shall also provide to such persons information regarding available educational services, genetic counseling, and other beneficial resources.

(3) The Department of Health shall adopt rules to implement this section.

Section 6. Section 383.148, Florida Statutes, is created to read:

383.148 ENVIRONMENTAL RISK SCREENING.—

(1) RISK SCREENING.—To help ensure access to the maternal and child health care system, the Department of Health shall promote the screening of all pregnant women and infants in this state for environmental risk factors, such as low income, poor

education, maternal and family stress, mental health, substance use disorder, and other high-risk conditions, and promote education of the public about the dangers associated with environmental risk factors.

(2) PRENATAL RISK SCREENING REQUIREMENTS.—The department shall develop a multilevel screening process that includes a risk assessment instrument to identify women at risk for a preterm birth or other high-risk condition.

(a) A primary health care provider must complete the risk screening at a pregnant woman's first prenatal visit using the form and in the manner prescribed by rules adopted under this section, so that the woman may immediately be notified and referred to appropriate health, education, and social services.

(b) This subsection does not apply if the pregnant woman objects to the screening in a manner prescribed by department rule.

(3) POSTNATAL RISK SCREENING REQUIREMENTS.—The department shall develop a multilevel screening process that includes a risk assessment instrument to identify factors associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management.

(a) A hospital or birth center must complete the risk screening immediately following the birth of the infant, before discharge from the hospital or birth center, using the form and in the manner prescribed by rules adopted under this section.

(b) This subsection does not apply if a parent or guardian of the newborn objects to the screening in a manner prescribed

by department rule.

Section 7. Paragraph (i) of subsection (3) of section 383.318, Florida Statutes, is amended to read:

383.318 Postpartum care for birth center clients and infants.—

(3) The birth center shall provide a postpartum evaluation and followup care that includes all of the following:

(i) Provision of the informational pamphlet on infant and childhood eye and vision disorders created by the department pursuant to s. 383.14(3)(h) ~~s. 383.14(3)(i)~~.

Section 8. Section 395.1053, Florida Statutes, is amended to read:

395.1053 Postpartum education.—A hospital that provides birthing services shall incorporate information on safe sleep practices and the possible causes of Sudden Unexpected Infant Death into the hospital's postpartum instruction on the care of newborns and provide to each parent the informational pamphlet on infant and childhood eye and vision disorders created by the department pursuant to s. 383.14(3)(h) ~~s. 383.14(3)(i)~~.

Section 9. Section 456.0496, Florida Statutes, is amended to read:

456.0496 Provision of information on eye and vision disorders to parents during planned out-of-hospital births.—A health care practitioner who attends an out-of-hospital birth must ensure that the informational pamphlet on infant and childhood eye and vision disorders created by the department pursuant to s. 383.14(3)(h) ~~s. 383.14(3)(i)~~ is provided to each parent after such a birth.

Section 10. (1) Effective upon this act becoming a law and

notwithstanding any provision of s. 381.986(8)(a)2.b., Florida Statutes, to the contrary, the Department of Health must grant an applicant 90 days to cure, pursuant to the errors and omissions process established in department Form DH8035-OMMU-10/2021 as incorporated by the department in rule 64ER21-16, Florida Administrative Code, any remaining deficiencies cited by the department regarding the application if the applicant:

(a) Applied for a medical marijuana treatment center license during the application window created by the department to accept applications for licensure pursuant to s. 381.986(8)(a)2.b., Florida Statutes; and

(b) Has not been awarded a license, either from the initial application process or through the cure process established in section 2 of chapter 2023-292, Laws of Florida.

(2) If the applicant cures the deficiencies within the 90-day timeframe, the department must issue a medical marijuana treatment center license to the applicant.

(3) For purposes of the cure process detailed in subsections (1) and (2), the department must consider all deficiencies with an applicant's application to be cured if the sole remaining deficiency cited is a failure to meet the requirement in s. 381.986(8)(b)1., Florida Statutes.

(4) If an applicant who was alive as of February 1, 2024, dies before the completion of the cure process detailed in subsections (1) and (2), the death of the applicant may not be a reason to deny the application during the cure process or any resulting legal challenges. In such case, and in the event of a successful cure or challenge, the department must issue the license to the estate of the applicant.

Section 11. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

FISCAL POLICY
Committee

SB 1582
Bill Number or Topic

922552
Amendment Barcode (if applicable)

Name LAYNE SMITH

Phone 904-343-3213

Address 4500 SAN PABLO RD.
Street

Email Smith.layne@Mayo.edu

Jacksonville FL 32224
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

MAYO CLINIC

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1582
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eileen Segal Miami DADE PTA

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City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1582
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. (Florida PTA)

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Orlando FL 32809
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: Florida PTA

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1600
INTRODUCER:	Fiscal Policy Committee; and Senator Collins
SUBJECT:	Interstate Mobility
DATE:	February 29, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Favorable**
2.	Kraemer	Imhof	RI	**Favorable**
3.	Rossitto-Van Winkle	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1600 creates s. 455.2135, F.S., to require the regulatory boards in the Department of Professional Regulation (DBPR), or the DBPR itself when there is no regulatory board for a profession, and when endorsement based on years of licensure is not otherwise provided by law in the practice act for a profession, to allow licensure by endorsement for any individual who applies for licensure by endorsement if the applicant meets certain specified criteria. The bill does not apply to harbor pilots.

The bill also creates s. 456.0145, F.S., which requires the Department of Health (DOH) to issue a license by endorsement to a qualified applicant within seven days of receipt of all required documents for specified health care professions[1] regulated by the DOH when the applicant meets specific criteria. The DOH boards, or the DOH when there is no board, may continue processing applications for licensure by endorsement as authorized under the Florida Statutes (2023) until rules adopted by the boards, or the DOH, to implement the changes made by the bill take effect or until six months after the bill's effective date, whichever occurs first.

The bill provides an effective date of July 1, 2024.

[1] Office of Program Analysis and Government Accountability, Department of Health, Medical Quality Assurance, *Who Regulates practitioners?* available at https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5041#:~:text=Currently%2C%20the%20program%2C%20in%20conjunction%20with%2022%20boards,pharmacies%2C%20and%20resident%20and%20nonresident%20sterile%20compounding%20pharmacies.%29 (last visited Jan. 24, 2024).

II. Present Situation:

Department of Business and Professional Regulation

Chapter 455, F.S., applies to the regulation of professions by the DBPR.[2] The chapter also provides the procedural and administrative framework for its divisions and the professional boards within the DBPR.[3] In this context, the term "profession" means any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[4] When a person is authorized to engage in a pertinent profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.

Organizational Structure of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 11 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Professions;
- Real Estate;
- Regulation;
- Technology; and
- Service Operations.

Permits, Registrations, Certificates, and Licenses Issued by the DBPR

The following boards and programs are established within the Division of Professions:

- Board of Architecture and Interior Design;[5]
- Florida Board of Auctioneers;[6]
- Barbers' Board;[7]
- Florida Building Code Administrators and Inspectors Board;[8]
- Board of Construction Industry Licensing;[9]
- Board of Cosmetology;[10]

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[2] Section 455.01(6), F.S.
[3] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. *See* s. 455.221(1), F.S.
[4] Section 455.01(6), F.S.
[5] *See* part I, ch. 481, F.S.
[6] *See* part VI, ch. 468, F.S.
[7] *See* ch. 476, F.S.
[8] *See* part XII, ch. 468, F.S.
[9] *See* part I, ch. 489, F.S.
[10] See ch. 477, F.S.

- Electrical Contractors' Licensing Board;[11]
- Board of Employee Leasing Companies;[12]
- Board of Landscape Architecture;[13]
- Board of Pilot Commissioners;[14]
- Florida Board of Professional Engineers;[15]
- Board of Professional Geologists;[16]
- Board of Veterinary Medicine;[17]
- Home inspection services licensing program;[18] and
- Mold-related services licensing program.[19]

The following board and commission are established within the Division of Real Estate:
- Florida Real Estate Appraisal Board; [20]and
- Florida Real Estate Commission.[21]

The board of Accountancy is established within the Division of Certified Public Accounting.[22]

The following additional professions are licensed and regulated within the DBPR, in various other divisions, for a total of 22[23] regulated professions throughout the DBPR:[24]
- Asbestos contractors and consultants;
- Athletic agent;[25]
- Community association managers;[26] and
- Talent agencies.[27]

[11] *See* part II, ch. 489, F.S.
[12] *See* Part XI, ch. 468, F.S.
[13] *See* Part II, ch. 481, F.S.
[14] *See* ch. 310, F.S.
[15] *See* ch. 471, F.S.
[16] *See c*h. 492, F.S.
[17] See ch. 474, F.S.
[18] *See* part XV, ch. 468, F.S.
[19] *See* part XVI, ch. 468, F.S.
[20] *See* part II, ch. 475, F.S.
[21] *See* part I, ch. 475. F.S.
[22] *See* ch. 473, F.S.
[23] *See* Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2022-2023*, at pp. 18 and 87, available at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 23, 2024).
[24] The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only; and The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law. *See* s. 548.003(1), F.S., and parts I and III, ch. 450, F.S., respectively.
[25] *See* part IX, ch., 468 F.S.
[26] *See* s. 468.432, F.S.
[27] *See* part VII, ch. 468, F.S.

DBPR Licensure by Endorsement

Of the 22 professions that fall under ch. 455, F.S., sixteen of the professions currently have one or more licensure by endorsement provisions in their practice act. The following six professions do not have provisions for licensure by endorsement:

- Harbor pilots;
- Talent agents;
- Community association managers;
- Athletic agents;
- Employee leasing companies; and
- Real estate appraisers.

The following DBPR-regulated professions have endorsement provisions but do not specify the number of years of licensure that are required for endorsement:

- Auctioneers;
- Architecture and interior design;
- Real estate brokers, sales associates, and schools; and
- Cosmetology specialists.

Department of Health

One of the many enumerated missions of the DOH is to regulate health practitioners for the preservation of the health, safety, and welfare of the public.[28] The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care practitioners.[29] The MQA works in conjunction with 22 regulatory boards and four councils to license and regulate 364 health care professions.[30] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

Regulation of Health Care Practitioners

The MQA is statutorily responsible for assisting the following boards and professions in the regulation of their health care practitioner members:[31]

- The Board of Acupuncture;[32]
- The Board of Medicine;[33]

[28] Section 20.43, F.S.
[29] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, genic counselors, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.
[30] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2022-2023*, at pg. 4, available at https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html (last visited Jan. 23, 2024).
[31] Section 456.001(4), F.S.
[32] *See* ch. 457, F.S.
[33] *See* ch. 458, F.S.

- The Board of Osteopathic Medicine;[34]
- The Board of Chiropractic Medicine;[35]
- The Board of Podiatric Medicine;[36]
- Naturopathy;[37]
- The Board of Optometry;[38]
- The Board of Nursing;[39]
- Nursing assistants;[40]
- The Board of Pharmacy;[41]
- The Board of Dentistry; [42]
- Midwifery; [43]
- The Board of Speech-Language Pathology and Audiology; [44]
- The Board of Nursing Home Administrators; [45]
- The Board of Occupational Therapy;[46]
- Respiratory therapy, practices under the Board of Respiratory Care;[47]
- Dietetics and nutritionists practice under the Board of Medicine;[48]
- The Board of Athletic Training;[49]
- The Board of Orthotists and Prosthetists;[50]
- Electrolysis practices under the Board of Medicine;[51]
- The Board of Massage Therapy;[52]
- The Board of Clinical Laboratory Personnel;[53]
- Medical physicists;[54]
- Genetic counselors;[55]
- The Board of Opticianry;[56]
- The Board of Hearing Aid Specialists;[57]

[34] See ch. 459, F.S.
[35] See ch. 460, F.S.
[36] *See* ch. 461, F.S.
[37] *See* ch. 462, F.S.
[38] *See* ch. 463, F.S.
[39] *See* part I, ch. 464, F.S.
[40] *See* part II, Ch. 464, F.S.
[41] See ch. 465, F.S.
[42] *See* ch. 466, F.S.
[43] *See* ch. 467, F.S.
[44] *See* part I, ch. 468, F.S.
[45] *See* part II, ch. 468, F.S.
[46] *See* part III, ch. 468, F.S.
[47] *See* part V, ch. 468, F.S.
[48] *See* part X, ch. 468, F.S.
[49] *See* part XIII, ch. 468, F.S.
[50] *See* part XIV, ch. 468, F.S.
[51] *See* ch. 478, F.S.
[52] *See* ch. 480, F.S.
[53] *See* part I, ch. 483, F.S.
[54] *See* part II, ch. 483, F.S.
[55] See part III, ch. 483, F.S.
[56] *See* part I, ch. 484, F.S.
[57] *See* part II, ch. 484, F.S.

- The Board of Physical Therapy;[58]
- The Board of Psychology;[59]
- School psychologists;[60]
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling;[61]
- Radiation technologists;[62]
- Emergency medical technicians;[63] and
- Paramedics.[64]

The DOH and the health care practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to specific legislative grants of statutory authority and directives. The DOH receives and investigates complaints about health care practitioners and prosecutes cases for disciplinary action against practitioners. The boards determine the course of action and any disciplinary action to be taken against a practitioner under the applicable practice act.[65] The DOH is then responsible for ensuring that the licensee complies with the terms and penalties imposed by the board. If a case is appealed, the DOH's attorneys defend the final actions of the boards before the appropriate appellate court.

For professions for which there is no board, the DOH determines the action and discipline to be taken against a health care practitioner and issues the final orders. Those professions include the following:

- Emergency medical technicians (EMTs);
- Paramedics;
- Genetic counselors ;
- Radiation technologists;
- Naturopathy; and
- Medical physicists.

The DOH rules and board rules apply to all statutory grounds for discipline against a health care practitioner. Under current law, the DOH has disciplinary authority for violations of a practice act only for practitioners that are not regulated by a board. The DOH does not have final disciplinary authority over practitioners for which there is a board.

[58] *See* ch. 486, F.S.
[59] *See* ch. 490, F.S.
[60] *Id*.
[61] *See* ch. 491, F.S.
[62] *See* part III, ch. 468, F.S.
[63] *See* part III, ch. 401, F.S.
[64] *Id*.
[65] Section 456.072(2), F.S.

Licensure of Health Care Practitioners

Licensure by examination is the most common pathway for individuals seeking initial licensure, particularly among health care professionals educated and trained in Florida. The requirements to qualify for licensure by examination are legislatively specified in each profession's respective practice act and vary widely based on the profession. However, licensure by examination has some common elements for most health care professions, and those include the following:

- Completion of an approved or legislatively mandated educational training program;
- Completion of an approved or legislatively mandated licensure or certification examination with a passing score; and
- Submission of a legislatively mandated application, approved by the DOH, fingerprints for a criminal background check, and an application fee.

Licensure by Endorsement of Health Care Professionals

Licensure by endorsement is the most common alternative to licensure by examination in Florida. Licensure by endorsement is an expedited licensure process which allows a health care professional to become licensed in Florida based upon holding a substantially equivalent or similar health care professional license from another state. Currently, 20 health care professionals regulated by the DOH and the boards are legislatively authorize to offer licensure by endorsement. Seventeen are not. See lists below.

Health Care Professions with Licensure by Endorsement	Health Care Professions without Licensure by Endorsement
Acupuncturist	Anesthesiologist Assistant
Allopathic Physician (MD)	Athletic Trainer
Audiologist	Chiropractor
Certified Nursing Assistant (CNA)	Clinical Laboratory Personnel
Mental Health Professions	Dental Hygienist
Dietitian	Dentist
Electrologist	EMT/Paramedic
Licensed Practical Nurse (LPN)	Genetic Counselor
Massage Therapist	Hearing Aid Specialist
Midwifery	Medical Physicist
Nursing Home Administrator	Optometrist
Occupational Therapist	Optician
Pharmacist	Orthotist and Prosthetist
Physical Therapist/Physical Therapy Assist.	Osteopathic Physician (DO)
Physical Therapist Assistant	Physician Assistant
Psychologist/School Psychologist	Podiatrist
Radiation Technician	Registered Pharmacy Technician
Registered Nurse (RN/APRN)	
Respiratory Therapist	
Speech-Language Pathologist	

Even among the health care professions which allow licensure by endorsement, there is no universal set of requirements. Requirements to obtain licensure by endorsement vary widely by profession. For example, the Legislature has mandated in some professions that applicants seeking licensure by endorsement have graduated from a school or college approved by a specific governmental accrediting body, jurisdictional accrediting body, or private accrediting body; submit fingerprints for a background screening;[66] have a certain amount of prior practice experience;[67] have a specific proficiency in English; or pass a statutorily-specified national or regional examination and an examination on Florida laws and rules relevant to the applicant's profession.[68]

Acupuncture Licensure by Endorsement

In s. 457.105(2)(c), F.S., the Legislature authorizes acupuncturists to obtain Florida licensure by endorsement if an applicant has successfully completed a board-approved national certification process and is actively licensed in a state that had examination requirements that were substantially equivalent to, or more stringent than, those of Florida. The Board of Acupuncture enacted Florida Administrative Code Rule 64B1-3.009, specifying that it would certify an applicant for licensure by endorsement under s. 457.105(2), F.S., upon proof of the following:

- An active certification in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);
- An age of 21 or older;
- Good moral character;
- The ability to communicate in English;
- Having 60 hours of study in injection therapy, including:
  - History and development of acupuncture injection therapy;
  - Differential diagnosis;
  - Definitions, concepts, and pathophysiology;
  - The nature, function, channels entered, and contraindications of herbal, homeopathic, and nutritional injectables;
  - Diseases amenable to treatment with acupuncture injection therapy and the injectables appropriate to treat them;
  - Identification of appropriate points for treatment, including palpatory diagnosis;
  - A review of anatomy and referral zones;
  - Universal precautions including management of blood borne pathogens and biohazardous waste;
  - Procedures for injections, including preparing the injectables, contraindications and precautions;
  - Ten hours of clinical practice on a patient or patients; and
  - Administration techniques and equipment needed.
- That he or she has successfully complete 15 hours of supervised instruction in universal precautions and 20 hours of supervised instruction in Florida Statutes and Rules, including chs. 456 and 457, F.S., and the acupuncture administrative rules;

[66] Allopathic Physicians, Certified Nursing Assistants, Licensed Practice Nurses, Registered Nurses, and Massage Therapists.
[67] Allopathic Physicians, Mental Health Professionals, Licensed Practical Nurses, Registered Nurses, Nursing Home Administrators, Pharmacists, and Psychologists.
[68] Mental Health Professions, Licensed Practical Nurses, Registered Nurses, Nursing Home Administrators, Pharmacists, Psychologists, and Radiology Technicians.

- That he or she has completed an eight-hour program, or its equivalent, that incorporates the safe and beneficial use of laboratory testing and imaging findings in the practice of acupuncture and oriental medicine;
- That he or she has obtained professional liability insurance;[69] and
- That he or she has paid the fee for licensure by endorsement as established by the board.

Medical Licensure by Endorsement

The DOH must issue an allopathic medical license to an applicant for a license by endorsement, if he or she meets the following requirements set out in s. 458.313, F.S., which includes first meeting the qualifications for licensure set out in s. 458.311(1)(b) -(g), F.S., or s. 458.311(1)(b) -(e),(g) and (3), F.S., pertaining to licensure by examination. Section 458. 311(1)(b) -(g), F.S., for licensure by examination, first requires the applicant to prove he or she:

- Is 21 year of age or older;
- Is of good moral character;
- Has not committed any act or offense in Florida or any other jurisdiction that would constitute the basis for disciplinary action;
- If a medical school graduate after October 1, 1992, that he or she must have completed the equivalent of two academic years of pre-professional, postsecondary education, as determined by rule of the board, which must include, courses in anatomy, biology, and chemistry prior to entering medical school;
- Meets one of the following medical education and post graduate training requirements:[70]
    - Is a graduate of a U.S. allopathic medical school recognized and approved by the U.S. Office of Education (AMG); is competent in English and completed at least one year of approved residency; or
    - Is a graduate of an international allopathic medical school registered with the World Health Organization (WHO) that has been certified by the DOH under s. 458.314, F.S., as having met the standards required to be an accredited medical school in the U.S.; and
        - Has a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate; and
        - Has completed an approved residency of at least two years in one specialty area; or
    - Is a graduate of an international medical school that has not been certified by the DOH under s. 458.314, F.S., as having met the standards equal to an accredit U.S. medical schools; and
        - Has had his or her medical credentials evaluated by the ECFMG;
        - Holds an active, valid certificate issued by the ECFMG;
        - Has passed the examination utilized by the ECFMG; and
        - Has completed an approved residency or fellowship of at least two years in one specialty area.[71]

[69] *See* s. 456.048, F.S.
[70] Section 458.311(1)(f), F.S.
[71] *See* s. 458.311(1)(f)3.c., F.S. To be acceptable, the fellowship experience and training must count toward regular or subspecialty certification by a board recognized and certified by the American Board of Medical Specialties.

The alternative first requirement for licensure by examination and by endorsement under s. 358.313, F. S., replaces the education and post-graduate training requirements of s. 458.311(1)(f), F.S., with those in s. 458.311(3), F.S., which exempts graduates of foreign medical schools from the need to present a certificate issued by the ECFMG, and from passing an ECFMG examination, if the graduate:

- Has received a bachelor's degree from an accredited U.S. college or university;
- Has studied at a medical school which is recognized by the WHO;
- Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements;
- Has passed part I of the National Board of Medical Examiners (NBME) examination or the ECFMG examination; and
- Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association (CME-AMA) and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

Allopathic medical applicants for licensure by endorsement must also submit fingerprints for a criminal background screening and provide evidence of:

- A passing score on the FLEX, USMLE or NBME; and
- An active medical license in another jurisdiction for at least two of the immediately preceding four years; or
- Successful completion of either a board-approved postgraduate training program within two years preceding the filing of an application; or
- Passage of a board-approved clinical competency examination within the year preceding the filing of an application for licensure.

Nursing Licensure by Endorsement - CNA, LPN, RN, ARNP

The DOH must issue an professional (RN) or practical (LPN) nursing license to an applicant for a license by endorsement if he or she meets the following requirements set out in s. 464.009, F.S.:

- Hold a valid license to practice professional or practical nursing in another state or territory of the U.S. obtained by one of the following measures:
  - By completing an approved or accredited nursing education program[72] and passing the State Board Test Pool Examination (SBTPE) or the NCLEX; or
  - By having actively practiced nursing in another state, jurisdiction, or territory of the U.S. for two of the preceding three years without any criminal history or having his or her license acted against by the licensing authority of any jurisdiction.
- Submit a set of fingerprints for a background screening; and
- Not be under investigation in another state, jurisdiction, or territory of the U.S. for an act which would constitute a violation of nurse practice act or ch. 456, F.S.

[72] *See* s 464.008, F.S.

An RN or LPN holding an active multistate license in another state is not required to obtain a license by endorsement to practice in Florida.[73]

The Legislature has also directed the Board of Nursing (BON) to issue certificates to certified nursing assistants (CNAs) by endorsement. Section 464.203, F.S., requires the BON to issue a certificate to practice as a CNA to any person who demonstrates the following:

- A minimum competency to read and write;
- Passage of the required background screening;[74]
- A current CNA certification in another state, U.S. territory, or the District of Columbia;
- Registration on that jurisdiction's CNA registry; and
- The absence of any findings of abuse, neglect, or exploitation by the applicant in that jurisdiction.

An advanced practice registered nurses (APRN) may also obtain licensure by endorsement in Florida by submitting proof of all of the following to the DOH:[75]

- A valid RN license from any U.S. jurisdiction or a multistate RN license;
- A master's degree or post-master's degree certification;
- A national advanced practice certification from an approved nursing specialty board;
- Malpractice insurance or exemption; and
- Fingerprints for back ground screening for initial licensure.

Pharmacist Licensure by Endorsement

Section 465.0075, F.S., requires the DOH to issue a license by endorsement to an applicant who remits an application fee and whom the Board of Pharmacy (BOP) certifies:

- Is 18 years of age or older;[76]
- Has a degree from a school or college of pharmacy accredited by an agency recognized and approved by the U.S. Office of Education ;[77]
- Has submitted proof that he or she has completed a BOP-approved internship program not to exceed 2,080 hours, all of which may be obtained prior to graduation;[78]
- Has obtained a passing score on the National Association of Boards of Pharmacy (NABP) licensure examination or a similar nationally recognized examination, if the board certifies that the applicant has taken the required examination;
- Has submitted evidence of:
    - An active license to practice pharmacy, including practice in community or public health by persons employed by a governmental entity, in another jurisdiction for at least two of the immediately preceding five years, or
    - The completion of a board-approved postgraduate training or clinical competency examination within the year immediately preceding application; and

[73] *See* s. 464.0095, F.S.
[74] *See* s. 400.215, F.S.
[75] *See* s. 464.012, F.S.
[76] Sections 465.0075(1)(a) and 465.007(1)(b), F.S.
[77] *Id*.
[78] Sections 465.0075(1)(a) and 465.007(1)(c), F.S.

    - Has obtained a passing score on the pharmacy jurisprudence portions of the licensure examination; and
- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the pharmacy practice act or ch. 456, F.S.

An applicant licensed in another state for a period in excess of two years from the date of application for licensure by endorsement must also submit a total of at least 30 hours of BOP approved continuing education (CE) for the two years immediately preceding application.

Section 465.0075, F.S., requires the DOH to issue a non-U.S. pharmacist graduate a license by endorsement who remits an application fee and whom the BOP certifies:
- Is 18 years of age or older;
- Has a BS or BA from a four-year undergraduate pharmacy program from a school or college of pharmacy located outside the U.S.;
- Has demonstrated proficiency in English by passing both the Test of English as a Foreign Language (TOEFL) and the Test of Spoken English (TSE);
- Has passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) that is approved by BOP rule;
- Has completed a minimum of 500 hours in a supervised, BOP-approved work activity program within Florida under the supervision of a pharmacist licensed by the DOH;
- Has submitted proof that he or she has completed a BOP-approved internship program not to exceed 2,080 hours, all of which may be obtained prior to graduation;[79]
- Has obtained a passing score on the National Association of Boards of Pharmacy (NABP) licensure examination or a similar nationally recognized examination, if the board certifies that the applicant has taken the required examination;
- Has submitted evidence of:
    - An active license to practice pharmacy, including practice in community or public health by persons employed by a governmental entity, in another jurisdiction for at least two of the immediately preceding five years, or
    - The completion of a board-approved postgraduate training or clinical competency examination within the year immediately preceding application; and
    - Has obtained a passing score on the pharmacy jurisprudence portions of the licensure examination; and
- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the pharmacy practice act or ch. 456, F.S.

Midwifery Licensure by Endorsement

Midwifery is the practice of a midwife supervising normal labor and childbirth and the practice of rendering prenatal and postpartum care.[80] Midwives are not physicians or certified nurse midwives but must be 21 years of age and licensed under ch. 467, F.S.[81]

[79] Sections 465.0075(1)(a) and 465.007(1)(c), F.S.
[80] Section 467.003(8), F.S.
[81] Section 467.003, (7), F.S.

Section 467.0125, F.S., requires the DOH to issue a license to a midwife by endorsement to any applicants who demonstrates to the DOH that he or she:

- Holds an active, unencumbered license to practice midwifery in another state, jurisdiction, or territory, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were substantially equivalent to or exceeded those established under the midwifery practice act and rules adopted hereunder;
- Has successfully completed a pre-licensure course conducted by an accredited and approved midwifery program;
- Submits an application for licensure on a DOH-approved form; and
- Pays the application fee.

Speech and Language Pathologist and Audiologist Licensure by Endorsement

Section 468.1185, F.S., requires the DOH to issue a license by endorsement to a speech and language pathologist or audiologist applicant when the Board of Speech and Language Pathology and Audiology certifies that the applicant is qualified after he or she demonstrates:

- One of the following:
  - A valid license or certificate in another state or territory of the U.S. to practice the profession for which the application for licensure is made, if the criteria for issuance of such license were substantially equivalent to or more stringent than the licensure criteria which existed in this state at the time the license was issued; or
  - Holds a valid certificate of clinical competence from the American Speech-Language and Hearing Association; or
  - Is board certified in audiology by the American Board of Audiology; and
- That he or she is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the speech and language pathology and audiology practice act or ch. 456, F.S.

Nursing Home Administrators Licensure by Endorsement

Section 468.1705, F.S., requires the DOH to issue a license by endorsement for a nursing home administrator who applies to the DOH, paid the applicable fee; and

- Meets one of the following requirements:
  - Holds a valid, active license to practice nursing home administration in another U.S. state, provided that the current requirements for licensure in that state are substantially equivalent to, or more stringent than, current requirements in this state; or
  - Meets the qualifications for licensure in s. 468.1695, F.S.; and
- Has completed a national examination which is substantially equivalent to, or more stringent than, the examination given by the DOH;
- Has passed an examination on the laws and rules of Florida governing the administration of nursing homes;
- Has worked as a fully-licensed nursing home administrator for two of the last five years immediately preceding the application; and
- Is not under investigation in this or another state for any act which would constitute a violation of the nursing home administrators practice act or ch. 456, F.S.

A temporary license may be issued one time only to an applicant who has filed an application for licensure by endorsement, has paid the fee for the next laws and rules examination offered, and who meets the following requirements:

- Has filed an application for a temporary license and paid an application fee;
- Has taken, or applied to take, the licensure examination;[82]
- Has worked as a fully licensed nursing home administrator for two of the last five year period immediately preceding application for a temporary license.

Occupational Therapy Licensure by Endorsement

In s. 468.213, F.S., the Legislature authorizes the Board of Occupational Therapy to waive the examination requirements for licensure and grant a license without examination in two situations:

- To any person who presents proof of a current certification as an occupational therapist or occupational therapy assistant by a national certifying organization if the board determines the requirements for such certification to be equivalent to the requirements for licensure in the practice act; and
- To any person who presents proof of a current license as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or any territory or jurisdiction of the U.S., or foreign national jurisdiction which required standards for licensure equivalent to the requirements for licensure in the practice act as determined by the board.

Radiation Technicians Licensure by Endorsement

Section 468.3065, F.S., authorizes the DOH to issue a certificate by endorsement to practice as a radiologist assistant to an applicant who, upon applying to the DOH and remitting an application fee, demonstrates to the DOH that he or she holds a current certificate or registration as a radiologist assistant granted by the American Registry of Radiologic Technologists.

Section 468.3065, F.S. also authorizes the DOH to issue a certificate by endorsement to practice radiologic technology to an applicant who, upon applying to the DOH and remitting a fee, demonstrates to the DOH that he or she holds a current certificate, license, or registration to practice radiologic technology, provided that the requirements for such certificate, license, or registration are deemed by the DOH to be substantially equivalent to those established under Section 468.3065, F.S., and rules adopted pursuant thereto.

Finally, the DOH may issue a certificate by endorsement to practice radiologic technology to an applicant who, upon applying to the DOH, remits an appropriate fee and demonstrates to the DOH that he or she holds a current certificate, license, or registration to practice radiologic technology, provided that the requirements for such certificate, license, or registration are deemed by the DOH to be substantially equivalent to those established under the practice act and rules adopted under the radiation technicians practice act.

[82] *See* ss. 468.1695(1), and 468.1705(4), F.S.

Respiratory Therapy Licensure by Endorsement

Section 468.358, F.S., authorizes the DOH to grant licenses by endorsement to certified respiratory therapists and registered respiratory therapists if credentialed by the National Board for Respiratory Care or a board-approved equivalent credential acceptable to the board. Licensure by this mechanism requires verification under oath and satisfactory evidence establishing that the credential is held.

Section 468.358, F.S., also authorizes the DOH to grant licenses by endorsement to individuals who have been granted licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care services in another state or country. Those persons may petition the board for consideration for licensure, and upon verification under oath and submission of evidence of licensure, certification, registration, or other authority acceptable to the board, may be granted licensure by endorsement.

Dietetics and Nutrition Licensure by Endorsement

Section 468.513, F,S., requires the DOH to issue a license by endorsement to practice dietetics and nutrition to any applicant that the Board of Medicine certifies is qualified, upon receipt of a completed application, the appropriate fee, and satisfactory evidence that he or she:

- Is a registered dietitian; or
- Holds a valid license to practice dietetics or nutrition issued by another state, district, or territory of the U.S., if the criteria for issuance of such license are determined by the board to be substantially equivalent to or more stringent than those of Florida; and
- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the dietician and nutritionist practice act or ch. 456, F.S.

Electrologist Licensure by Endorsement

Section 478.47, F.S., requires the DOH to issue a license by endorsement to an electrologist applicant who submits an application, the required application fees and who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the Board of Medicine to be equivalent to the requirements for licensure in Florida.

Massage Therapy Licensure by Endorsement

The Legislature created the Board of Massage Therapy (BMT) within the DOH.[83] The BMT developed Florida Administrative Code Rule 64B7-25.004, *Endorsements*,[84] to require the DOH to issue a massage therapy license by endorsement to all applicants who satisfy the following criteria:

- Pay the initial license application fee;[85]

[83] Section 480.035, F.S.
[84] *See* Fla. Admin. Code R. 64B7-25.004, *Endorsements*, lists Rulemaking Authority as ss. 456.013(2), 480.035(7), 480.041(4)(c), F.S. There is no longer a s. 480.041(4)(c), F.S.
[85] Fla. Admin. Code R. 64B7-27.100 (2023).

- Submit a completed application;[86]
- Demonstrate a current license to practiced massage therapy in another state; and
- Demonstrate that the license was required to meet education standards or apprenticeship training substantially similar to, equivalent to, or more stringent than those required for licensure by chs. 456 and 480, F.S., and applicable Florida administrative code rules; and
- Demonstrate that the out-of-state license was issued upon:
  - The satisfactory completion of an examination comparable to the examination approved by the BMT; or
  - Present a certification to the BMT of successful completion of an approved examination for licensure subsequent to the issuance of the out-of-state license;
- Have no outstanding or unresolved complaints in any jurisdiction where licensure is held; and,
- Complete a 10-hour course of Florida Laws and Rules CE offered by a BMT-approved massage therapy school or BMT-approved continuing education provider.

Physical Therapy Practice by Endorsement

In s. 486.081, F.S., the Legislature has authorized the Board of Physical Therapy (BPT) to issue through the DOH a physical therapy (PT) license without examination to any applicant who presents evidence of the following:
- Having passed the American Registry Examination prior to 1971; or
- Having passed an examination in PT before a similar examining board of another state, the District of Columbia, a territory, or a foreign country, if the standards for licensure in physical therapy in such other state, district, territory, or foreign country are determined by the BPT to be as high as those of Florida.

In s. 486.107, F.S., the Legislature has authorized the BPT to issue through the DOH a license for a physical therapy assistant (PTA) without examination to any applicant who presents evidence to the BPT, under oath, of a license in another state, the District of Columbia, or a territory, if the standards for registering as a PTA or licensing of a PTA, in the other state are determined by the BPT to be as high as those of Florida.

Psychologist or School Psychologist Licensure by Endorsement

In s. 490.006, F.S., the Legislature requires the DOH to issue a license to a person as a psychologist or school psychologist who applies to the DOH, pays the appropriate application fee, and demonstrates to the Board of Psychology, or in the case of the school psychologist, to the DOH, that the applicant:
- Is a diplomate with the American Board of Professional Psychology, Inc.; or
- Possesses a doctoral degree in psychology and has at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the U.S. within the 25 years preceding the date of application;
- Has passed that portion of the psychology or school psychology licensure examinations pertaining to the laws and rules related to the practice of psychology or school psychology in Florida; and

[86] Fla. Admin. Code R. 64B7-25.001.

- Is not under investigation in any jurisdiction for an act or offense that would constitute a violation of the psychological services practice act or ch. 456, F.S.

A person licensed as a psychologist in another state who is practicing pursuant to the Psychology Interjurisdictional Compact under s. 490.0075, F.S., and only within the scope provided therein, is exempt from the licensure by endorsement requirements of s. 490.006, F.S.

Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling Licensure by Endorsement

In s. 491.006, F.S., the Legislature requires the DOH to issue licenses or certificates, as appropriate, to a person applying for licensure by endorsement as a clinical social worker, marriage and family therapist, or mental health counselor who remits the appropriate fee and demonstrates to the Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling that he or she:

- Has knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling;
- Holds an active license to practice and has actively practiced the licensed profession in another state for three of the last five years immediately preceding licensure;
- Has passed:
  - A substantially equivalent licensing examination in another state; or
  - Has passed the licensure examination in Florida in the profession for which the applicant is applying; and
- Holds a license in good standing;
- Is not under investigation for an act that would constitute a violation of the clinical, counseling, and psychotherapy services practice act or ch. 456, F.S.; and
- Has not been found to have committed any act that would constitute a violation of the clinical, counseling, and psychotherapy services practice act or ch. 456, F.S.

III. Effect of Proposed Changes:

Licensure by Endorsement - DBPR-Regulated Professions

CS/SB 1600 creates s. 455.2135, F.S., to require the regulatory boards in the DBPR, or the DBPR itself when there is no regulatory board for a profession, when endorsement based on years of licensure is not otherwise provided by law in the practice act of a profession, to allow licensure by endorsement for any individual who applies if he or she meets the following criteria:

- Holds a valid, current license to practice the profession issued by another state or territory of the U.S. for at least five years before the date of application and be applying for the same or similar Florida license;
- Submits an application either:
  - When the license in another state or territory is active; or
  - Within two years after such license was last active;
- Has passed the recognized national licensing exam, if the exam is established as a requirement for licensure in the profession;
- Has no pending disciplinary actions and all sanctions for any prior disciplinary actions have been satisfied;

- Shows proof of compliance with any federal regulation, training, or certification, if the board or the DBPR requires such proof, regarding licensure in the profession;
- Has completed Florida-specific continuing education courses or passed a jurisprudential examination specific to the state laws and rules for the applicable profession as established by the board or the DBPR; and
- Has complied with any insurance or bonding requirements as required for the profession.

The bill further provides that if the ch. 455, F.S., professional practice act for a profession requires the submission of fingerprints, the applicant must submit and pay for a complete set of fingerprints to the Department of Law Enforcement (FDLE) for a statewide criminal history check. The FDLE must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The DBPR must review the results of the criminal history checks according to the level II screening standards in s. 435.04, F.S, and determine whether the applicant meets the licensure requirements. The boards are not required to make such a review.

Section 455.2135, F.S., exempts harbor pilots licensed under ch. 310, F.S., from these requirements.

Licensure by Endorsement - DOH-Regulated Professions

The bill creates s. 456.0145, F.S., the MOBILE Act, which requires the DOH to issue a license by endorsement to a qualified applicant within seven days of receipt of all required documents for specified health care professions regulated by the DOH when the applicant meets all of the following specific criteria:

- Submits a complete application;
- Holds an active, unencumbered license issued by another state, the District of Columbia, or a territory of the U.S. in a profession with a similar "scope of practice," as determined by the board or the DOH, as applicable. Section 456.0145(2)(a)2., F.S., defines the term "scope of practice" as the full spectrum of functions, procedures, actions, and services that a health care practitioner is deemed competent and authorized to perform under a Florida license; and delegates to the boards, or the DOH where there is no board, to determine what that means for each of the 364 professions licensed by the DOH;
- Has obtained:
  - A passing score on a national licensure examination or holds a national certification recognized by the board, or the DOH if there is no board, as applicable to the profession for which the applicant is seeking licensure; or
  - If the profession applied for does not require a national examination or national certification and the applicable board, or the DOH, if there is no board, determines that the jurisdiction in which the applicant currently holds an active, unencumbered license:
    - Meets established minimum education requirements; and
    - The work experience, and clinical supervision requirements are substantially similar to the requirements for licensure in that profession in Florida;
- Has actively practiced the profession for at least three years during the four year period immediately preceding the application submission;
- Attests that he or she is not, at the time of application submission, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the U.S.

Department of Defense for reasons related to the practice of the profession for which he or she is applying;
- Has not had disciplinary action taken against him or her in the five years preceding the application submission application;
- Meets the financial responsibility requirements of s. 456.048, F.S., or the applicable practice act; and
- Submits a set of fingerprints for a background screening pursuant to s. 456.0135, F.S.

The bill requires the DOH to verify the information above submitted by the applicant using the National Practitioner Data Bank.[87]

The bill defines a person as ineligible for a license under s. 456.0145, F.S., if he or she:
- Has a complaint, an allegation, or an investigation pending before a licensing entity in another state, the District of Columbia, or a territory of the U.S.;
- Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;
- Has had a health care provider license revoked or suspended by another state, the District of Columbia, or a possession or territory of the U.S. or has voluntarily surrendered any license in lieu of having disciplinary action taken against the license; or
- Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed.

The bill authorizes the board, or the DOH where there is no board, under s. 456.0145, F.S., to revoke a license upon finding that the licensee provided false or misleading material information or intentionally omitted material information in an application.

The bill authorizes the board, or the DOH where there is no board, to require an applicant to successfully complete a state jurisprudential examination on laws and rules that regulate the applicable profession, if the applicable practice act requires such examination.

The bill requires the DOH to submit an annual report by December 31 to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides all of the following information for the previous fiscal year, distinguished by profession:
- The number of applications for licensure received under the MOBILE Act;
- The number of licenses issued under the MOBILE Act;
- The number of applications submitted under the MOBILE Act which were denied and the reason for such denials; and
- The number of complaints, investigations, or other disciplinary actions taken against health care practitioners who are licensed under the MOBILE Act.

The bill requires each applicable board, or the DOH if there is no board, to adopt rules to implement s. 456.0145, F.S., within six months after its effective date, including rules relating to

[87] The National Practitioner Data Bank is an Internet-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. Established by Congress in 1986, it is a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance.

legislative intent provided under s. 456.025(1), F.S.,[88] and the requirements of s. 456.025(3), F.S.[89]

Health Care Professions with Licensure by Endorsement Under Current Law

The bill amends current law for licensure by endorsement in various practice acts to conform to provisions found in the MOBILE Act and to retain statutory guidance for the maximum amounts of related application fees. The bill does not alter current law relating to certification by endorsement for radiologist assistants, radiologic technologists, or respiratory therapists.

The bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Some portions of CS/SB 1600 may represent an unconstitutional delegation of legislative authority to the boards, or the agencies where there is no board, under Article II, Section 3, of the Florida Constitution. The bill gives the boards, and agencies when there is no board, the right to exercise broad discretion as to what constitutes a similar scope of practice between licensed professions in Florida versus other states. However, the exercise of such discretion is conditioned upon the existence of eligibility requirements and licensing in the same or similar profession. Under current law, many boards and the agencies evaluate whether licensing and examination standards for a profession are

[88] Section 456.025(1), F.S., provides, in part, that "It is the intent of the Legislature that all costs of regulating health care professions and practitioners shall be borne solely by licensees and licensure applicants. It is also the intent of the Legislature that fees should be reasonable and not serve as a barrier to licensure."

[89] Section 456.025(3), F.S., requires, in part, that "Each board within the jurisdiction of the department, or the department when there is no board, shall determine by rule the amount of license fees for the profession it regulates, based upon long-range estimates prepared by the department of the revenue required to implement laws relating to the regulation of professions by the department and the board. Each board, or the department if there is no board, shall ensure that license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the agency, with advice of the applicable board."

substantially similar to those in Florida.[90] See *Askew v. Cross Key Waterways*, 372 So. 2d 913, 918-918 (Fla. 1978) (*rehearing den. Feb. 15, 1979*) ("[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals seeking to work in Florida may be eligible under the additional pathways created by the bill to obtain a license to work in specified professions in Florida.

C. Government Sector Impact:

According to the Florida Department of Law Enforcement (FDLE), although CS/SB 1600 does not require additional programing of the department's Biometric Identification System (BIS), if the population targeted in the bill were to submit fingerprints for a state and national criminal history record check and the FDLE were to retain the fingerprints, the bill, along with other bills requiring background screening that are currently being considered by the Legislature, would add to the workload on the FDLE's BIS. The FDLE is currently in the process of migrating the current system to the new generation of BIS. With the capacity limitations of the current system, this could cause undue strain. [91]

The FDLE also indicates that the bill does not appear to create the need for additional full-time equivalent positions or other resources; however, the bill, along with other bills requiring background screening that are currently being considered by the Legislature, could rise to the level of requiring additional staffing and other resources.[92]

The bill will have a significant negative fiscal impact on the Department of Health (DOH) that cannot be absorbed within current resources. To implement the provisions of the bill, the DOH estimates the need for nine full-time equivalent (FTE) positions and $1,346,032 in the following categories:

[90] *See* e.g., s. 455.213(14), F.S., relating to reciprocal licensing agreements, and s. 456.47, F.S., relating to registration of out-of-state telehealth providers.
[91] Florida Department of Law Enforcement, *2024 FDLE Legislative Bill Analysis: SB 1600*, Jan. 19, 2024 (on file with the Senate Committee on Regulated Industries).
[92] *Id.*

Category	Amount	Recurring/Nonrecurring	Purpose
Salaries and Benefits	$972,813	Recurring	9 FTE • Application Processing (3 FTE) • Complaint processing, investigations, and prosecutions (4 FTE) • Contract management, and technology updates (2 FTE)
Expense	$188,289	$128,358 Recurring/ $59,931 Nonrecurring	Expenses related to FTE Queries to the Natl. Practitioner Database
Contracted Services	$181,692	Recurring	Staff augmentation to perform data gathering and annual report production
Human Resources	$3,238	Recurring	Human resources assessment

VI. Technical Deficiencies:

None.

VII. Related Issues:

Regarding lines 94-99 and 103-107, the FDLE indicates a need for the bill to ensure compliance with federal law and the U.S. Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services Division for a national criminal history background check. The department points out that access to FBI criminal history record information is not allowed unless all criteria specified within Public Law 92-544 are satisfied. Such compliance already exists for the current law requirements for submission of fingerprints to the DBPR and the DOH for review as part of licensing under the various practice acts, and is applicable to the additional licensing pathways described in the bill.[93]

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 455.2135 and 456.0145.

The bill substantially amends the following sections of the Florida Statutes: 457.105, 458.313, 464.009, 464.203, 465.0075, 467.0125, 468.1185, 468.1705, 468.209, 468.213, 468.513, 478.47, 480.041, 484.007, 486.031, 486.081, 486.102, 486.107, 490.006, and 491.006.

[93] *Id.*

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 Fiscal Policy on February 27, 2024:
The CS:

- Changes the bill's criterion for eligibility relating to a person who has not had disciplinary action taken against his or her out-of-state license prior to seeking licensure by endorsement in Florida from a seven-year period to a five-year period;
- Disqualifies an out-of-state licensee who has ever voluntarily surrendered a license in lieu of having disciplinary action taken against the license;
- Removes from the bill the provision that would disqualify someone who has previously failed the Florida examination required to receive a license;
- Requires a board, or the department if there is no board, to issue a license to a qualified applicant within seven days, instead of 15 days, after receipt of all documentation required for an application;
- Requires the annual report to include data on the number of complaints, investigations, or other disciplinary actions taken against health care practitioners who are licensed under the MOBILE Act;
- Applies the MOBILE Act to licensure by endorsement for certified nursing assistants and occupational therapists; and
- Removes from the bill provisions relating to certification by endorsement for radiologist assistants, radiologic technologists, or respiratory therapists.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Collins) recommended the following:

Senate Amendment (with title amendment)

Delete lines 118 - 721

and insert:

board, shall issue a license to practice in this state to an applicant who meets all of the following criteria:

1. Submits a complete application.

2. Holds an active, unencumbered license issued by another state, the District of Columbia, or a territory of the United States in a profession with a similar scope of practice, as

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determined by the board or department, as applicable. The term "scope of practice" means the full spectrum of functions, procedures, actions, and services that a health care practitioner is deemed competent and authorized to perform under a license issued in this state.

3.a. Has obtained a passing score on a national licensure examination or holds a national certification recognized by the board, or the department if there is no board, as applicable to the profession for which the applicant is seeking licensure in this state; or

b. Meets the requirements of paragraph (b).

4. Has actively practiced the profession for which the applicant is applying for at least 3 years during the 4-year period immediately preceding the date of submission of the application.

5. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

6. Has not had disciplinary action taken against him or her in the 5 years immediately preceding the date of submission of the application.

7. Meets the financial responsibility requirements of s. 456.048 or the applicable practice act, if required for the profession for which the applicant is seeking licensure.

8. Submits a set of fingerprints for a background screening pursuant to s. 456.0135, if required for the profession for which he or she is applying.

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The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank, as applicable.

(b) An applicant for a profession that does not require a national examination or national certification is eligible for licensure if an applicable board, or the department if there is no board, determines that the jurisdiction in which the applicant currently holds an active, unencumbered license meets established minimum education requirements and, if applicable, examination, work experience, and clinical supervision requirements that are substantially similar to the requirements for licensure in that profession in this state.

(c) A person is ineligible for a license under this section if the he or she:

1. Has a complaint, an allegation, or an investigation pending before a licensing entity in another state, the District of Columbia, or a possession or territory of the United States;

2. Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;

3. Has had a health care provider license revoked or suspended by another state, the District of Columbia, or a territory of the United States, or has voluntarily surrendered any such license in lieu of having disciplinary action taken against the license; or

4. Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed from the data bank.

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(d) The board, or the department if there is no board, may revoke a license upon finding that the licensee provided false or misleading material information or intentionally omitted material information in an application for licensure.

(e) The board, or the department if there is no board, shall issue a license to a qualified applicant within 7 days after receipt of all documentation required for an application.

(3) STATE EXAMINATION.—The board, or the department if there is no board, may require an applicant to successfully complete a jurisprudential examination specific to state laws and rules that regulate the applicable profession, if this chapter or the applicable practice act requires such examination.

(4) ANNUAL REPORT.—By December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides all of the following information for the previous fiscal year, distinguished by profession:

(a) The number of applications for licensure received under this section.

(b) The number of licenses issued under this section.

(c) The number of applications submitted under this section which were denied and the reason for such denials.

(d) The number of complaints, investigations, or other disciplinary actions taken against health care practitioners who are licensed under this section.

(5) RULES.—Each applicable board, or the department if there is no board, shall adopt rules to implement this section within 6 months after this section's effective date, including

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rules relating to legislative intent under s. 456.025(1) and the requirements of s. 456.025(3).

Section 3. Paragraph (c) of subsection (2) of section 457.105, Florida Statutes, is amended to read:

457.105 Licensure qualifications and fees.—

(2) A person may become licensed to practice acupuncture if the person applies to the department and:

(c) Has successfully completed a board-approved national certification process, meets the requirements for licensure by endorsement under s. 456.0145 ~~is actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those of this state~~, or passes an examination administered by the department, which examination tests the applicant's competency and knowledge of the practice of acupuncture and oriental medicine. At the request of any applicant, oriental nomenclature for the points shall be used in the examination. The examination shall include a practical examination of the knowledge and skills required to practice modern and traditional acupuncture and oriental medicine, covering diagnostic and treatment techniques and procedures; and

Section 4. Section 458.313, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 458.313, F.S., for present text.)

458.313 Licensure by endorsement; requirements; fees.—The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board in an amount not

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to exceed $500, the board certifies has met the requirements for licensure by endorsement under s. 456.0145.

Section 5. Section 464.009, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 464.009, F.S., for present text.)

464.009 Licensure by endorsement.—

(1) The department shall issue the appropriate license by endorsement to practice professional or practical nursing to any applicant who, upon applying to the department and remitting a fee set by the board in an amount not to exceed $100, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145.

(2) A person holding an active multistate license in another state pursuant to s. 464.0095 is exempt from the requirements for licensure by endorsement in this section.

Section 6. Paragraph (c) of subsection (1) of section 464.203, Florida Statutes, is amended to read:

464.203 Certified nursing assistants; certification requirement.—

(1) The board shall issue a certificate to practice as a certified nursing assistant to any person who demonstrates a minimum competency to read and write and successfully passes the required background screening pursuant to s. 400.215. If the person has successfully passed the required background screening pursuant to s. 400.215 or s. 408.809 within 90 days before applying for a certificate to practice and the person’s background screening results are not retained in the clearinghouse created under s. 435.12, the board shall waive the


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requirement that the applicant successfully pass an additional background screening pursuant to s. 400.215. The person must also meet one of the following requirements:

(c) Has been deemed by the board as eligible for licensure by endorsement under s. 456.0145 ~~Is currently certified in another state or territory of the United States or in the District of Columbia; is listed on that jurisdiction's certified nursing assistant registry; and has not been found to have committed abuse, neglect, or exploitation in that jurisdiction~~.

Section 7. Section 465.0075, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 465.0075, F.S., for present text.)

465.0075 Licensure by endorsement; requirements; fee.—The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a nonrefundable fee set by the board in an amount not to exceed $100, the board certifies has met the requirements for licensure by endorsement under s. 456.0145.

Section 8. Subsection (1) of section 467.0125, Florida Statutes, is amended to read:

467.0125 Licensed midwives; qualifications; endorsement; temporary certificates.—

(1) The department shall issue a license by endorsement to practice midwifery to an applicant who~~, upon applying to the department,~~ demonstrates to the department that she or he meets ~~all of~~ the requirements for licensure by endorsement under s. 456.0145 ~~following criteria:~~

~~(a) Holds an active, unencumbered license to practice~~

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~~midwifery in another state, jurisdiction, or territory, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were substantially equivalent to or exceeded those established under this chapter and the rules adopted hereunder.~~

~~(b) Has successfully completed a prelicensure course conducted by an accredited and approved midwifery program.~~

~~(c)~~ submits an application for licensure on a form approved by the department, and pays the appropriate fee.

Section 9. Subsections (3) and (4) of section 468.1185, Florida Statutes, are amended to read:

468.1185 Licensure.—

~~(3) The board shall certify as qualified for a license by endorsement as a speech-language pathologist or audiologist an applicant who:~~

~~(a) Holds a valid license or certificate in another state or territory of the United States to practice the profession for which the application for licensure is made, if the criteria for issuance of such license were substantially equivalent to or more stringent than the licensure criteria which existed in this state at the time the license was issued; or~~

~~(b) Holds a valid certificate of clinical competence of the American Speech-Language and Hearing Association or board certification in audiology from the American Board of Audiology.~~

(3) ~~(4)~~ The board may refuse to certify any person applying for licensure under this section ~~applicant~~ who is under investigation in any jurisdiction for an act which would constitute a violation of this part or chapter 456 until the investigation is complete and disciplinary proceedings have been


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terminated.

Section 10. Subsections (1), (2), and (3) of section 468.1705, Florida Statutes, are amended to read:

468.1705 Licensure by endorsement; temporary license.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee set by the board not to exceed $500, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Meets one of the following requirements:~~

~~1. Holds a valid active license to practice nursing home administration in another state of the United States, provided that the current requirements for licensure in that state are substantially equivalent to, or more stringent than, current requirements in this state; or~~

~~2. Meets the qualifications for licensure in s. 468.1695; and~~

~~(b)1. Has successfully completed a national examination which is substantially equivalent to, or more stringent than, the examination given by the department;~~

~~2. Has passed an examination on the laws and rules of this state governing the administration of nursing homes; and~~

~~3. Has worked as a fully licensed nursing home administrator for 2 years within the 5-year period immediately preceding the application by endorsement.~~

~~(2) National examinations for licensure as a nursing home administrator shall be presumed to be substantially equivalent to, or more stringent than, the examination and requirements in this state, unless found otherwise by rule of the board~~.


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(2)~~(3)~~ The department may ~~shall~~ not issue ~~a license by endorsement or~~ a temporary license to any applicant who is under investigation in this or another state for any act which would constitute a violation of this part until such time as the investigation is complete and disciplinary proceedings have been terminated.

Section 11. Subsection (3) of section 468.209, Florida Statutes, is amended to read:

468.209 Requirements for licensure.—

(3) If the board determines that an applicant is qualified to be licensed by endorsement under s. 456.0145 ~~s. 468.213~~, the board may issue the applicant a temporary permit to practice occupational therapy until the next board meeting at which license applications are to be considered, but not for a longer period of time. Only one temporary permit by endorsement shall be issued to an applicant, and it shall not be renewable.

Section 12. Section 468.213, Florida Statutes, is amended to read:

468.213 Licensure by endorsement; waiver of examination requirement.—

(1) The board may ~~waive the examination and~~ grant a license to any person who meets the requirements for licensure by endorsement under s. 456.0145 ~~presents proof of current certification as an occupational therapist or occupational therapy assistant by a national certifying organization if the board determines the requirements for such certification to be equivalent to the requirements for licensure in this act~~.

(2) The board may waive the examination and grant a license to any applicant who presents proof of current licensure as an

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occupational therapist or occupational therapy assistant in a ~~another state, the District of Columbia, or any territory or jurisdiction of the United States or~~ foreign national jurisdiction which requires standards for licensure determined by the board to be equivalent to the requirements for licensure in this part ~~act~~.

Section 13. Section 468.513, Florida Statutes, is amended to read:

468.513 Dietitian/nutritionist; licensure by endorsement.—

~~(1)~~ The department shall issue a license to practice dietetics and nutrition by endorsement to any applicant who meets the requirements for licensure by endorsement under s. 456.0145 ~~the board certifies as qualified~~, upon receipt of a completed application and the fee specified in s. 468.508.

~~(2) The board shall certify as qualified for licensure by endorsement under this section any applicant who:~~

~~(a) Presents evidence satisfactory to the board that he or she is a registered dietitian; or~~

~~(b) Holds a valid license to practice dietetics or nutrition issued by another state, district, or territory of the United States, if the criteria for issuance of such license are determined by the board to be substantially equivalent to or more stringent than those of this state.~~

~~(3) The department shall not issue a license by endorsement under this section to any applicant who is under investigation in any jurisdiction for any act which would constitute a violation of this part or chapter 456 until such time as the investigation is complete and disciplinary proceedings have been terminated.~~

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Section 14. Section 478.47, Florida Statutes, is amended to read:

478.47 Licensure by endorsement.—The department shall issue a license by endorsement to any applicant who, upon submitting ~~submits~~ an application and the required fees as set forth in s. 478.55, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~and who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the board to be equivalent to the requirements for licensure in this state~~.

Section 15. Paragraph (c) of subsection (5) of section 480.041, Florida Statutes, is amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

(5) The board shall adopt rules:

(c) Specifying licensing procedures for practitioners desiring to be licensed in this state who meet the requirements for licensure by endorsement under s. 456.0145 or hold an active license and have practiced in ~~any other state, territory, or jurisdiction of the United States or~~ any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

Section 16. Present subsections (3) and (4) of section 484.007, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsection (1) of that section is amended, to read:

484.007 Licensure of opticians; permitting of optical

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establishments.—

(1) Any person desiring to practice opticianry shall apply to the department, upon forms prescribed by it, to take a licensure examination. The department shall examine each applicant who the board certifies meets all of the following criteria:

(a) Has completed the application form and remitted a nonrefundable application fee set by the board, in the amount of $100 or less, and an examination fee set by the board, in the amount of $325 plus the actual per applicant cost to the department for purchase of portions of the examination from the American Board of Opticianry or a similar national organization, or less, and refundable if the board finds the applicant ineligible to take the examination.~~;~~

(b) Is not younger ~~less~~ than 18 years of age.~~;~~

(c) Is a graduate of an accredited high school or possesses a certificate of equivalency of a high school education.~~; and~~

(d)1. Has received an associate degree, or its equivalent, in opticianry from an educational institution the curriculum of which is accredited by an accrediting agency recognized and approved by the United States Department of Education or the Council on Postsecondary Education or approved by the board;

~~2. Is an individual licensed to practice the profession of opticianry pursuant to a regulatory licensing law of another state, territory, or jurisdiction of the United States, who has actively practiced in such other state, territory, or jurisdiction for more than 3 years immediately preceding application, and who meets the examination qualifications as provided in this subsection;~~

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~~3. Is an individual who has actively practiced in another state, territory, or jurisdiction of the United States for more than 5 years immediately preceding application and who provides tax or business records, affidavits, or other satisfactory documentation of such practice and who meets the examination qualifications as provided in this subsection;~~ or

2.~~4.~~ Has registered as an apprentice with the department and paid a registration fee not to exceed $60, as set by rule of the board. The apprentice shall complete 6,240 hours of training under the supervision of an optician licensed in this state for at least 1 year or of a physician or optometrist licensed under the laws of this state. These requirements must be met within 5 years after the date of registration. However, any time spent in a recognized school may be considered as part of the apprenticeship program provided herein. The board may establish administrative processing fees sufficient to cover the cost of administering apprentice rules as promulgated by the board.

(3) The board shall certify to the department for licensure by endorsement any applicant who meets the requirements for licensure by endorsement under s. 456.0145.

Section 17. Section 486.081, Florida Statutes, is amended to read:

486.081 Physical therapist; issuance of license by endorsement; issuance of license without examination to person passing examination of another authorized examining board in a foreign country; fee.—

(1) The board may cause a license by endorsement to be issued through the department ~~without examination~~ to any applicant who meets the requirements for licensure by

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endorsement under s. 456.0145 or, without examination, to any applicant who presents evidence satisfactory to the board of having passed ~~the American Registry Examination prior to 1971 or~~ an examination in physical therapy before a similar lawfully authorized examining board of ~~another state, the District of Columbia, a territory, or~~ a foreign country~~,~~ if the standards for licensure in physical therapy in such ~~other state, district, territory, or~~ foreign country are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter. Any person who holds a license pursuant to this section may use the words "physical therapist" or "physiotherapist" or the letters "P.T." in connection with her or his name or place of business to denote her or his licensure hereunder. A person who holds a license pursuant to this section and obtains a doctoral degree in physical therapy may use the letters "D.P.T." and "P.T." A physical therapist who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

(2) At the time of making application for licensure under ~~without examination pursuant to the terms of~~ this section, the applicant shall pay to the department a nonrefundable fee set by the board in an amount not to exceed $175 ~~as fixed by the board, no part of which will be returned~~.

Section 18. Section 486.107, Florida Statutes, is amended to read:

486.107 Physical therapist assistant; issuance of license by endorsement ~~without examination to person licensed in another jurisdiction~~; fee.—

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(1) The board may cause a license by endorsement to be issued through the department ~~without examination~~ to any applicant who presents evidence to the board, under oath, of meeting the requirements for licensure by endorsement under s. 456.0145 ~~licensure in another state, the District of Columbia, or a territory, if the standards for registering as a physical therapist assistant or licensing of a physical therapist assistant, as the case may be, in such other state are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter~~. Any person who holds a license pursuant to this section may use the words "physical therapist assistant," or the letters "P.T.A.," in connection with her or his name to denote licensure hereunder.

(2) At the time of making application for licensure by endorsement under ~~licensing without examination pursuant to the terms of~~ this section, the applicant shall pay to the department a nonrefundable fee set by the board in an amount not to exceed $175 ~~as fixed by the board, no part of which will be returned~~.

Section 19. Subsections (1), (2), and (3) of section 490.006, Florida Statutes, are amended to read:

490.006 Licensure by endorsement.—

(1) The department shall license a person as a psychologist or school psychologist who, upon applying to the department and remitting the appropriate fee, demonstrates to the department or, in the case of psychologists, to the board that the applicant meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Is a diplomate in good standing with the American Board~~

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~~of Professional Psychology, Inc.; or~~

~~(b) Possesses a doctoral degree in psychology and has at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.~~

~~(2) In addition to meeting the requirements for licensure set forth in subsection (1), an applicant must pass that portion of the psychology or school psychology licensure examinations pertaining to the laws and rules related to the practice of psychology or school psychology in this state before the department may issue a license to the applicant.~~

~~(3) The department shall not issue a license by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 490.009 shall apply~~.

Section 20. Subsections (1) and (2) of section 491.006, Florida Statutes, are amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.~~

~~(b)1. Holds an active valid license to practice and has~~

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~~actively practiced the licensed profession in another state for 3 of the last 5 years immediately preceding licensure;~~

~~2. Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure; and~~

~~3. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter~~.

(2) The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.

~~(2) The department shall not issue a license or certificate by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 491.009 shall apply.~~

Section 21. Subsection (3) of section 486.031, Florida Statutes, is amended to read:

486.031 Physical therapist; licensing requirements.—To be eligible for licensing as a physical therapist, an applicant must:

(3)(a) Have been graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education at the time of her or his graduation and have passed, to the

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satisfaction of the board, the American Registry Examination prior to 1971 or a national examination approved by the board to determine her or his fitness for practice as a physical therapist as hereinafter provided;

(b) Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency as identified by the board, and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist as hereinafter provided; or

(c) Be entitled to licensure by endorsement or without examination as provided in s. 486.081.

Section 22. Subsection (3) of section 486.102, Florida Statutes, is amended to read:

486.102 Physical therapist assistant; licensing requirements.—To be eligible for licensing by the board as a physical therapist assistant, an applicant must:

(3)(a) Have been graduated from a school giving a course of not less than 2 years for physical therapist assistants, which has been approved for the educational preparation of physical therapist assistants by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education, at the time of her or his graduation and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

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(b) Have been graduated from a school giving a course for physical therapist assistants in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapist assistants in this country, as recognized by the appropriate agency as identified by the board, and passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

(c) Be entitled to licensure by endorsement ~~without examination~~ as provided in s. 486.107; or

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

And the title is amended as follows:

Delete lines 32 - 55

and insert:

department, as applicable, to issue licenses to qualified applicants within a specified timeframe; authorizing boards or the department, as applicable, to require that applicants successfully complete a jurisprudential examination under certain circumstances; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; requiring the boards and the department, as applicable, to adopt certain rules within a specified timeframe; amending ss. 457.105, 458.313, 464.009, 464.203, 465.0075, 467.0125, 468.1185, 468.1705, 468.209, 468.213, 468.513, 478.47, 480.041, 484.007,

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486.081, 486.107, 490.006, and 491.006, F.S.; revising licensure by endorsement requirements for the practice of acupuncture, medicine, professional or practical nursing, certified nursing, pharmacy, midwifery, speech-language pathology and audiology, nursing home administration, occupational therapy, dietetics and nutrition, electrology, massage therapy, opticianry, physical therapy, physical therapist assistantship, psychology and school psychology, and clinical social work, marriage and family therapy, and mental health counseling, respectively; amending ss. 486.031 and

By Senator Collins

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A bill to be entitled

An act relating to interstate mobility; creating s. 455.2135, F.S.; requiring the respective boards of occupations, or the Department of Business and Professional Regulation if there is no board, to allow licensure by endorsement if the applicant meets certain criteria; requiring applicants of professions that require fingerprints for criminal history checks to submit such fingerprints before the board or department issues a license by endorsement; requiring the department, and authorizing the board, to review the results of the criminal history checks according to specific criteria to determine if the applicants meet the requirements for licensure; requiring that the costs associated with fingerprint processing be borne by the applicant; if fingerprints are submitted through an authorized agency or vendor, requiring such agency or vendor to collect the processing fees and remit them to the Department of Law Enforcement; providing an exemption; creating s. 456.0145, F.S.; providing a short title; requiring the applicable health care regulatory boards, or the Department of Health if there is no board, to issue a license or certificate to applicants who meet specified conditions; defining the term "scope of practice"; requiring the department to verify certain information using the National Practitioner Data Bank, as applicable; specifying circumstances under which a person is ineligible for a license; authorizing boards

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

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or the department, as applicable, to revoke a license upon a specified finding; requiring boards or the department, as applicable, to issue licenses within a specified timeframe; authorizing boards or the department, as applicable, to require that applicants successfully complete a jurisprudential examination under certain circumstances; requiring the department to submit an annual report to the Governor and the Legislature by a specified date; providing requirements for the report; requiring the boards and the department, as applicable, to adopt certain rules within a specified timeframe; amending ss. 457.105, 458.313, 464.009, 465.0075, 467.0125, 468.1185, 468.1705, 468.213, 468.3065, 468.358, 468.513, 478.47, 480.041, 484.007, 486.081, 486.107, 490.006, and 491.006, F.S.; revising licensure by endorsement requirements for the practice of acupuncture, medicine, professional or practical nursing, pharmacy, midwifery, speech-language pathology and audiology, nursing home administration, occupational therapy, radiology, respiratory therapy, dietetics and nutrition, electrology, massage therapy, opticianry, physical therapy, physical therapist assistantship, psychology and school psychology, and clinical social work, marriage and family therapy, and mental health counseling, respectively; amending ss. 486.031 and 486.102, F.S.; conforming provisions to changes made by the act; authorizing the boards and the Department of Health, as applicable, to continue processing

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applications for licensure by endorsement, as authorized under the Florida Statutes (2023), for a specified timeframe; providing an effective date.

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

Section 1. Section 455.2135, Florida Statutes, is created to read:

455.2135 Interstate mobility.—

(1) When endorsement based on years of licensure is not otherwise provided by law in the practice act for a profession, the board, or the department if there is no board, shall allow licensure by endorsement for any individual applying who:

(a) Has held a valid, current license to practice the profession issued by another state or territory of the United States for at least 5 years before the date of application and is applying for the same or similar license in this state;

(b) Submits an application either when the license in another state or territory is active or within 2 years after such license was last active;

(c) Has passed the recognized national licensing exam, if such exam is established as a requirement for licensure in the profession;

(d) Has no pending disciplinary actions and all sanctions of any prior disciplinary actions have been satisfied;

(e) Shows proof of compliance with any federal regulation, training, or certification, if the board or the department requires such proof, regarding licensure in the profession;

(f) Completes Florida-specific continuing education courses

or passes a jurisprudential examination specific to the state laws and rules for the applicable profession as established by the board or department; and

(g) Complies with any insurance or bonding requirements as required for the profession.

(2) If the practice act for a profession requires the submission of fingerprints, the applicant must submit a complete set of fingerprints to the Department of Law Enforcement for a statewide criminal history check. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The department shall, and the board may, review the results of the criminal history checks according to the level 2 screening standards in s. 435.04 and determine whether the applicant meets the licensure requirements. The costs of fingerprint processing are borne by the applicant. If the applicant's fingerprints are submitted through an authorized agency or vendor, the agency or vendor must collect the required processing fees and remit the fees to the Department of Law Enforcement.

(3) This section does not apply to harbor pilots licensed under chapter 310.

Section 2. Section 456.0145, Florida Statutes, is created to read:

456.0145 Mobile Opportunity by Interstate Licensure Endorsement (MOBILE) Act.—

(1) SHORT TITLE.—This section may be cited as the "Mobile Opportunity by Interstate Licensure Endorsement Act" or the "MOBILE Act."

(2) LICENSURE BY ENDORSEMENT.—

(a) An applicable board, or the department if there is no board, shall issue a license or certificate to practice in this state to an applicant who meets all of the following criteria:

1. Submits a completed application.

2. Holds an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the United States in a profession with a similar scope of practice, as determined by the board or department, as applicable. As used in this subparagraph, the term "scope of practice" means the full spectrum of functions, procedures, actions, and services that a health care practitioner is deemed competent and authorized to perform under a license issued in this state.

3.a. Has obtained a passing score on a national licensure examination or holds a national certification recognized by the board, or the department if there is no board, as applicable to the profession for which the applicant is seeking licensure in this state; or

b. Meets the requirements of paragraph (b).

4. Has actively practiced the profession for which the applicant is applying for at least 3 years during the 4-year period immediately preceding the date of submission of the application.

5. Attests that he or she is not, at the time of submission of the application, the subject of a disciplinary proceeding in a jurisdiction in which he or she holds a license or by the United States Department of Defense for reasons related to the practice of the profession for which he or she is applying.

6. Has not had professional disciplinary action taken

against him or her in the 7 years immediately preceding the date of submission of the application.

7. Meets the financial responsibility requirements of s. 456.048 or the applicable practice act, if required for the profession for which the applicant is seeking licensure.

8. Submits a set of fingerprints for a background check pursuant to s. 456.0135 or the applicable practice act, if required for the profession for which he or she is applying.

The department shall verify information submitted by the applicant under this subsection using the National Practitioner Data Bank, as applicable.

(b) An applicant for a profession that does not require a national examination or national certification is eligible for licensure if an applicable board, or the department if there is no board, determines that the jurisdiction in which the applicant currently holds an active, unencumbered license meets established minimum education requirements and, if applicable, examination, work experience, and clinical supervision requirements that are substantially similar to the requirements for licensure in that profession in this state.

(c) A person is ineligible for a license under this section if the applicant:

1. Has a complaint, an allegation, or an investigation pending before a licensing entity in another state, the District of Columbia, or a possession or territory of the United States;

2. Has been convicted of or pled nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession;

3. Has had a health care provider license revoked or suspended by another state, the District of Columbia, or a possession or territory of the United States, or has voluntarily surrendered any such license;

4. Has been reported to the National Practitioner Data Bank, unless the applicant has successfully appealed to have his or her name removed from the data bank; or

5. Has previously failed the Florida examination required to receive a license to practice the profession for which the applicant is seeking a license.

(d) The board, or the department if there is no board, may revoke a license upon finding that the licensee provided false or misleading material information or intentionally omitted material information in an application for licensure.

(e) The board, or the department if there is no board, shall issue a license within 15 days after receipt of all documentation required for an application.

(3) STATE EXAMINATION.—The board, or the department if there is no board, may require an applicant to successfully complete a jurisprudential examination specific to state laws and rules for the applicable profession, if this chapter or the applicable practice act requires such examination.

(4) ANNUAL REPORT.—By December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides all of the following information for the previous fiscal year, per profession and in total:

(a) The number of applications for licensure received under this section.

(b) The number of licenses issued under this section.

(c) The number of applications submitted under this section which were denied and the reason for such denials.

(5) RULES.—Each applicable board, or the department if there is no board, shall adopt rules to implement this section within 6 months after this section's effective date, including rules relating to legislative intent under s. 456.025(1) and the requirements of s. 456.025(3).

Section 3. Subsection (2) of section 457.105, Florida Statutes, is amended to read:

457.105 Licensure qualifications and fees.—

(2) A person may become licensed to practice acupuncture if the person applies to the department and meets all of the following criteria:

(a) Is 21 years of age or older, has good moral character, and has the ability to communicate in English, which is demonstrated by having passed the national written examination in English or, if such examination was passed in a foreign language, by also having passed a nationally recognized English proficiency examination.~~;~~

(b) Has completed 60 college credits from an accredited postsecondary institution as a prerequisite to enrollment in an authorized 3-year course of study in acupuncture and oriental medicine, and has completed a 3-year course of study in acupuncture and oriental medicine, and effective July 31, 2001, a 4-year course of study in acupuncture and oriental medicine, which meets standards established by the board by rule, which standards include, but are not limited to, successful completion of academic courses in western anatomy, western physiology,

western pathology, western biomedical terminology, first aid, and cardiopulmonary resuscitation (CPR). However, any person who enrolled in an authorized course of study in acupuncture before August 1, 1997, must have completed only a 2-year course of study which meets standards established by the board by rule, which standards must include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, and western pathology.~~;~~

(c) Has successfully completed a board-approved national certification process, meets the requirements for licensure by endorsement under s. 456.0145 ~~is actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those of this state~~, or passes an examination administered by the department, which examination tests the applicant's competency and knowledge of the practice of acupuncture and oriental medicine. At the request of any applicant, oriental nomenclature for the points shall be used in the examination. The examination shall include a practical examination of the knowledge and skills required to practice modern and traditional acupuncture and oriental medicine, covering diagnostic and treatment techniques and procedures.~~; and~~

(d) Pays the required fees set by the board by rule not to exceed the following amounts:

1. Examination fee: $500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.

2. Application fee: $300.

3. Reexamination fee: $500 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from a national organization approved by the board.

4. Initial biennial licensure fee: $400, if licensed in the first half of the biennium, and $200, if licensed in the second half of the biennium.

Section 4. Section 458.313, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 458.313, F.S., for present text.)

458.313 Licensure by endorsement; requirements; fees.—The department shall issue a license by endorsement to any applicant who, upon applying to the department on forms furnished by the department and remitting a fee set by the board in an amount not to exceed $500, the board certifies has met the requirements for licensure by endorsement under s. 456.0145.

Section 5. Section 464.009, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 464.009, F.S., for present text.)

464.009 Licensure by endorsement.—

(1) The department shall issue the appropriate license by endorsement to practice professional or practical nursing to any applicant who, upon applying to the department and remitting a fee set by the board in an amount not to exceed $100, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145.

(2) A person holding an active multistate license in

another state pursuant to s. 464.0095 is exempt from the requirements for licensure by endorsement in this section.

Section 6. Section 465.0075, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 465.0075, F.S., for present text.)

465.0075 Licensure by endorsement; requirements; fee.—The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a nonrefundable fee set by the board in an amount not to exceed $100, the board certifies has met the requirements for licensure by endorsement under s. 456.0145.

Section 7. Subsection (1) of section 467.0125, Florida Statutes, is amended to read:

467.0125 Licensed midwives; qualifications; endorsement; temporary certificates.—

(1) The department shall issue a license by endorsement to practice midwifery to an applicant who, upon applying to the department on a form approved by the department and remitting the appropriate fee, demonstrates to the department that she or he meets the requirements for licensure by endorsement under s. 456.0145 ~~all of the following criteria:~~

~~(a) Holds an active, unencumbered license to practice midwifery in another state, jurisdiction, or territory, provided the licensing requirements of that state, jurisdiction, or territory at the time the license was issued were substantially equivalent to or exceeded those established under this chapter and the rules adopted hereunder.~~

~~(b) Has successfully completed a prelicensure course~~

~~conducted by an accredited and approved midwifery program.~~

~~(c) Submits an application for licensure on a form approved by the department and pays the appropriate fee~~.

Section 8. Subsections (3) and (4) of section 468.1185, Florida Statutes, are amended to read:

468.1185 Licensure.—

~~(3) The board shall certify as qualified for a license by endorsement as a speech-language pathologist or audiologist an applicant who:~~

~~(a) Holds a valid license or certificate in another state or territory of the United States to practice the profession for which the application for licensure is made, if the criteria for issuance of such license were substantially equivalent to or more stringent than the licensure criteria which existed in this state at the time the license was issued; or~~

~~(b) Holds a valid certificate of clinical competence of the American Speech-Language and Hearing Association or board certification in audiology from the American Board of Audiology.~~

(3)~~(4)~~ The board may refuse to certify any person applying for licensure under this section ~~applicant~~ who is under investigation in any jurisdiction for an act which would constitute a violation of this part or chapter 456 until the investigation is complete and disciplinary proceedings have been terminated.

Section 9. Subsections (1), (2), and (3) of section 468.1705, Florida Statutes, are amended to read:

468.1705 Licensure by endorsement; temporary license.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting

a fee set by the board not to exceed $500, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Meets one of the following requirements:~~

~~1. Holds a valid active license to practice nursing home administration in another state of the United States, provided that the current requirements for licensure in that state are substantially equivalent to, or more stringent than, current requirements in this state; or~~

~~2. Meets the qualifications for licensure in s. 468.1695; and~~

~~(b)~~ 1. ~~Has successfully completed a national examination which is substantially equivalent to, or more stringent than, the examination given by the department;~~

~~2. Has passed an examination on the laws and rules of this state governing the administration of nursing homes; and~~

~~3. Has worked as a fully licensed nursing home administrator for 2 years within the 5-year period immediately preceding the application by endorsement.~~

~~(2) National examinations for licensure as a nursing home administrator shall be presumed to be substantially equivalent to, or more stringent than, the examination and requirements in this state, unless found otherwise by rule of the board~~.

(2) ~~(3)~~ The department may ~~shall~~ not issue ~~a license by endorsement or~~ a temporary license to any applicant who is under investigation in this or another state for any act which would constitute a violation of this part until such time as the investigation is complete and disciplinary proceedings have been terminated.

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Section 10. Section 468.213, Florida Statutes, is amended to read:

468.213 Licensure by endorsement; waiver of examination requirement.—

(1) The board may ~~waive the examination and~~ grant a license to any person who meets the requirements for licensure by endorsement under s. 456.0145 ~~presents proof of current certification as an occupational therapist or occupational therapy assistant by a national certifying organization if the board determines the requirements for such certification to be equivalent to the requirements for licensure in this act~~.

(2) The board may waive the examination and grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in a ~~another state, the District of Columbia, or any territory or jurisdiction of the United States or~~ foreign national jurisdiction which requires standards for licensure determined by the board to be equivalent to the requirements for licensure in this part ~~act~~.

Section 11. Section 468.3065, Florida Statutes, is amended to read:

468.3065 Certification by endorsement.—

(1) The department may issue a certificate by endorsement to practice as a radiologist assistant to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed $50, demonstrates to the department that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~holds a current certificate or registration as a radiologist assistant granted by the American Registry of~~

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~~Radiologic Technologists~~.

(2) The department may issue a certificate by endorsement to practice radiologic technology to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed $50, demonstrates to the department that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~holds a current certificate, license, or registration to practice radiologic technology, provided that the requirements for such certificate, license, or registration are deemed by the department to be substantially equivalent to those established under this part and rules adopted under this part~~.

(3) The department may issue a certificate by endorsement to practice as a specialty technologist to an applicant who, upon applying to the department and remitting a nonrefundable fee not to exceed $100, demonstrates to the department that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~holds a current certificate or registration from a national organization in a particular advanced, postprimary, or specialty area of radiologic technology, such as computed tomography or positron emission tomography~~.

Section 12. Section 468.358, Florida Statutes, is amended to read:

468.358 Licensure by endorsement.—

(1) Licensure as a certified respiratory therapist must ~~shall~~ be granted by endorsement to an individual who meets the requirements for licensure by endorsement under s. 456.0145 ~~holds the "Certified Respiratory Therapist" credential issued by the National Board for Respiratory Care or an equivalent credential acceptable to the board. Licensure by this mechanism~~

~~requires verification by oath and submission of evidence satisfactory to the board that such credential is held.~~

~~(2) Licensure as a registered respiratory therapist shall be granted by endorsement to an individual who holds the "Registered Respiratory Therapist" credential issued by the National Board for Respiratory Care or an equivalent credential acceptable to the board. Licensure by this mechanism requires verification by oath and submission of evidence satisfactory to the board that such credential is held~~.

(2)~~(3)~~ An individual who has been granted licensure, certification, registration, or other authority, by whatever name known, to deliver respiratory care services in a foreign ~~another state or~~ country may petition the board for consideration for licensure in this state and, upon verification by oath and submission of evidence of licensure, certification, registration, or other authority acceptable to the board, may be granted licensure by endorsement.

(3)~~(4)~~ Licensure may ~~shall~~ not be granted by endorsement as provided in this section without the submission of a proper application and the payment of the requisite fees therefor.

Section 13. Section 468.513, Florida Statutes, is amended to read:

468.513 Dietitian/nutritionist; licensure by endorsement.—

~~(1)~~ The department shall issue a license to practice dietetics and nutrition by endorsement to any applicant who meets the requirements for licensure by endorsement under s. 456.0145 ~~the board certifies as qualified~~, upon receipt of a completed application and the fee specified in s. 468.508.

~~(2) The board shall certify as qualified for licensure by~~

~~endorsement under this section any applicant who:~~

~~(a) Presents evidence satisfactory to the board that he or she is a registered dietitian; or~~

~~(b) Holds a valid license to practice dietetics or nutrition issued by another state, district, or territory of the United States, if the criteria for issuance of such license are determined by the board to be substantially equivalent to or more stringent than those of this state.~~

~~(3) The department shall not issue a license by endorsement under this section to any applicant who is under investigation in any jurisdiction for any act which would constitute a violation of this part or chapter 456 until such time as the investigation is complete and disciplinary proceedings have been terminated.~~

Section 14. Section 478.47, Florida Statutes, is amended to read:

478.47 Licensure by endorsement.—The department shall issue a license by endorsement to any applicant who, upon submitting ~~submits~~ an application and the required fees as set forth in s. 478.55, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145 ~~and who holds an active license or other authority to practice electrology in a jurisdiction whose licensure requirements are determined by the board to be equivalent to the requirements for licensure in this state~~.

Section 15. Paragraph (c) of subsection (5) of section 480.041, Florida Statutes, is amended to read:

480.041 Massage therapists; qualifications; licensure; endorsement.—

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(5) The board shall adopt rules:

(c) Specifying licensing procedures for practitioners desiring to be licensed in this state who meet the requirements for licensure by endorsement under s. 456.0145 or hold an active license and have practiced in ~~any other state, territory, or jurisdiction of the United States or~~ any foreign national jurisdiction which has licensing standards substantially similar to, equivalent to, or more stringent than the standards of this state.

Section 16. Present subsections (3) and (4) of section 484.007, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new subsection (3) is added to that section, and subsection (1) of that section is amended, to read:

484.007 Licensure of opticians; permitting of optical establishments.—

(1) Any person desiring to practice opticianry shall apply to the department, upon forms prescribed by it, to take a licensure examination. The department shall examine each applicant who the board certifies meets all of the following criteria:

(a) Has completed the application form and remitted a nonrefundable application fee set by the board, in the amount of $100 or less, and an examination fee set by the board, in the amount of $325 plus the actual per applicant cost to the department for purchase of portions of the examination from the American Board of Opticianry or a similar national organization, or less, and refundable if the board finds the applicant ineligible to take the examination.~~;~~

(b) Is not younger ~~less~~ than 18 years of age.~~;~~

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(c) Is a graduate of an accredited high school or possesses a certificate of equivalency of a high school education.~~; and~~

(d)1. Has received an associate degree, or its equivalent, in opticianry from an educational institution the curriculum of which is accredited by an accrediting agency recognized and approved by the United States Department of Education or the Council on Postsecondary Education or approved by the board;

~~2. Is an individual licensed to practice the profession of opticianry pursuant to a regulatory licensing law of another state, territory, or jurisdiction of the United States, who has actively practiced in such other state, territory, or jurisdiction for more than 3 years immediately preceding application, and who meets the examination qualifications as provided in this subsection;~~

~~3. Is an individual who has actively practiced in another state, territory, or jurisdiction of the United States for more than 5 years immediately preceding application and who provides tax or business records, affidavits, or other satisfactory documentation of such practice and who meets the examination qualifications as provided in this subsection;~~ or

2.~~4.~~ Has registered as an apprentice with the department and paid a registration fee not to exceed $60, as set by rule of the board. The apprentice shall complete 6,240 hours of training under the supervision of an optician licensed in this state for at least 1 year or of a physician or optometrist licensed under the laws of this state. These requirements must be met within 5 years after the date of registration. However, any time spent in a recognized school may be considered as part of the apprenticeship program provided herein. The board may establish

administrative processing fees sufficient to cover the cost of administering apprentice rules as promulgated by the board.

(3) The board shall certify to the department for licensure by endorsement any applicant who meets the requirements for licensure by endorsement under s. 456.0145.

Section 17. Section 486.081, Florida Statutes, is amended to read:

486.081 Physical therapist; issuance of license by endorsement; issuance of license without examination to person passing examination of another authorized examining board in a foreign country; fee.—

(1) The board may cause a license by endorsement to be issued through the department ~~without examination~~ to any applicant who meets the requirements for licensure by endorsement under s. 456.0145 or, without examination, to any applicant who presents evidence satisfactory to the board of having passed ~~the American Registry Examination prior to 1971 or~~ an examination in physical therapy before a similar lawfully authorized examining board of ~~another state, the District of Columbia, a territory, or~~ a foreign country~~,~~ if the standards for licensure in physical therapy in such ~~other state, district, territory, or~~ foreign country are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter. Any person who holds a license pursuant to this section may use the words “physical therapist” or “physiotherapist” or the letters “P.T.” in connection with her or his name or place of business to denote her or his licensure hereunder. A person who holds a license pursuant to this section and obtains a doctoral degree in physical therapy

may use the letters "D.P.T." and "P.T." A physical therapist who holds a degree of Doctor of Physical Therapy may not use the title "doctor" without also clearly informing the public of his or her profession as a physical therapist.

(2) At the time of making application for licensure under ~~without examination pursuant to the terms of~~ this section, the applicant shall pay to the department a nonrefundable fee set by the board in an amount not to exceed $175 ~~as fixed by the board, no part of which will be returned~~.

Section 18. Section 486.107, Florida Statutes, is amended to read:

486.107 Physical therapist assistant; issuance of license by endorsement ~~without examination to person licensed in another jurisdiction~~; fee.—

(1) The board may cause a license by endorsement to be issued through the department ~~without examination~~ to any applicant who presents evidence to the board, under oath, of meeting the requirements for licensure by endorsement under s. 456.0145 ~~licensure in another state, the District of Columbia, or a territory, if the standards for registering as a physical therapist assistant or licensing of a physical therapist assistant, as the case may be, in such other state are determined by the board to be as high as those of this state, as established by rules adopted pursuant to this chapter~~. Any person who holds a license pursuant to this section may use the words "physical therapist assistant," or the letters "P.T.A.," in connection with her or his name to denote licensure hereunder.

(2) At the time of making application for licensure by

endorsement under ~~licensing without examination pursuant to the terms of~~ this section, the applicant shall pay to the department a nonrefundable fee set by the board in an amount not to exceed $175 ~~as fixed by the board, no part of which will be returned~~.

Section 19. Subsections (1), (2), and (3) of section 490.006, Florida Statutes, are amended to read:

490.006 Licensure by endorsement.—

(1) The department shall license a person as a psychologist or school psychologist who, upon applying to the department and remitting the appropriate fee, demonstrates to the department or, in the case of psychologists, to the board that the applicant meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Is a diplomate in good standing with the American Board of Professional Psychology, Inc.; or~~

~~(b) Possesses a doctoral degree in psychology and has at least 10 years of experience as a licensed psychologist in any jurisdiction or territory of the United States within the 25 years preceding the date of application.~~

~~(2) In addition to meeting the requirements for licensure set forth in subsection (1), an applicant must pass that portion of the psychology or school psychology licensure examinations pertaining to the laws and rules related to the practice of psychology or school psychology in this state before the department may issue a license to the applicant.~~

~~(3) The department shall not issue a license by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete,~~

~~at which time the provisions of s. 490.009 shall apply~~.

Section 20. Subsections (1) and (2) of section 491.006, Florida Statutes, are amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she meets the requirements for licensure by endorsement under s. 456.0145~~:~~

~~(a) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.~~

~~(b)1. Holds an active valid license to practice and has actively practiced the licensed profession in another state for 3 of the last 5 years immediately preceding licensure;~~

~~2. Has passed a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure; and~~

~~3. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter~~.

(2) The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.

~~(2) The department shall not issue a license or certificate by endorsement to any applicant who is under investigation in this or another jurisdiction for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 491.009 shall apply.~~

Section 21. Subsection (3) of section 486.031, Florida Statutes, is amended to read:

486.031 Physical therapist; licensing requirements.—To be eligible for licensing as a physical therapist, an applicant must:

(3)(a) Have been graduated from a school of physical therapy which has been approved for the educational preparation of physical therapists by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education at the time of her or his graduation and have passed, to the satisfaction of the board, the American Registry Examination prior to 1971 or a national examination approved by the board to determine her or his fitness for practice as a physical therapist as hereinafter provided;

(b) Have received a diploma from a program in physical therapy in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapists in this country, as recognized by the appropriate agency as identified by the board, and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist as hereinafter provided; or

(c) Be entitled to licensure by endorsement or without examination as provided in s. 486.081.

Section 22. Subsection (3) of section 486.102, Florida

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Statutes, is amended to read:

486.102 Physical therapist assistant; licensing requirements.—To be eligible for licensing by the board as a physical therapist assistant, an applicant must:

(3)(a) Have been graduated from a school giving a course of not less than 2 years for physical therapist assistants, which has been approved for the educational preparation of physical therapist assistants by the appropriate accrediting agency recognized by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education, at the time of her or his graduation and have passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

(b) Have been graduated from a school giving a course for physical therapist assistants in a foreign country and have educational credentials deemed equivalent to those required for the educational preparation of physical therapist assistants in this country, as recognized by the appropriate agency as identified by the board, and passed to the satisfaction of the board an examination to determine her or his fitness for practice as a physical therapist assistant as hereinafter provided;

(c) Be entitled to licensure by endorsement or without examination as provided in s. 486.107; or

(d) Have been enrolled between July 1, 2014, and July 1, 2016, in a physical therapist assistant school in this state which was accredited at the time of enrollment; and

1. Have been graduated or be eligible to graduate from such

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

school no later than July 1, 2018; and

2. Have passed to the satisfaction of the board an examination to determine his or her fitness for practice as a physical therapist assistant as provided in s. 486.104.

Section 23. Notwithstanding the changes made to the Florida Statutes (2023) by this act, a board as defined in s. 456.001, Florida Statutes, or the Department of Health, as applicable, may continue processing applications for licensure by endorsement as authorized under the Florida Statutes (2023) until the rules adopted by such board or the department to implement the changes made by this act take effect or until 6 months after the effective date of this act, whichever occurs first.

Section 24. This act shall take effect July 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

February 27, 2024
Meeting Date

Fiscal Policy
Committee

SB 1600
Bill Number or Topic

Amendment Barcode (if applicable)

Name George Levesque

Phone 850-577-9090

Address 301 S. Bronough St., Ste. 600
Street

Email george.levesque@gray-robinson.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Chapter of the American Institue of Architects

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

1600
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chad Kunde

Phone (850) 766-7996

Address 136 S Bronough St
Street

Tallahassee FL 32301
City State Zip

Email ckunde@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Chamber of Commerce

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

27 Feb 2024
Meeting Date

Fiscal Policy
Committee

1600
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris Stranburg

Phone 813-767-9667

Address 107 E College Ave
Street

Email cstranburg@afphq.org

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Americans for Prosperity

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

1600
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Kevin Comerer

Phone

Address
Street

Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Assoc. of Dental Support Organizations

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1622
INTRODUCER:	Fiscal Policy Committee; Banking and Insurance Committee; and Senator Trumbull
SUBJECT:	Insurance
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.	Thomas	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1622 revises provisions relating to the Office of Insurance Regulation (OIR). Specifically, the bill:

- Requires each insurer and insurer group, beginning January 1, 2025, to file the required supplemental reports monthly, rather than quarterly, and to provide such information broken down by zip code;
- Provides the Financial Services Commission authority to adopt rules to administer certain provisions;
- Revises financial requirements for a public housing self-insurance fund;
- Provides that, upon a declaration of an emergency, and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a residential property that has been damaged as a result of a hurricane or wind loss until 90 days after the residential property has been repaired;
- Provides that if an averaged model is used in ratemaking, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with an actuarial justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair;
- Repeals provisions providing that certain coverage under the Citizens Property Insurance Corporation is not subject to its rate limitations;

- Provides that a licensed roofing contractor is considered an "authorized inspector" for purposes of s. 672.7011(5), F.S., to provide roof inspections to determine if an insurer may require the replacement of a roof that is at least 15 years old;
- Amends s. 629.01, F.S., to provide an attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer; and
- Provides a substantial rewrite of provisions regulating reciprocal insurers.

The bill has an indeterminate impact to state revenues or expenditures. See Section V. Fiscal Impact Statement.

Except as expressly provided, the bill becomes effective on July 1, 2024.

II. Present Situation:

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[1] As part of its regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[2]

Financial Examinations

The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[3] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[4] The OIR is charged with conducting an exam once every three years for high-risk insurers and once every five years for low-risk insurers.[5] However, a domestic insurer that has held a certificate of authority for less than three years must be examined on an annual basis.[6] The OIR is required to examine an insurer applying for an initial certificate of authority prior to issuing the certificate of authority.[7]

Market Conduct Exams

The OIR is authorized, as often as it deems necessary, to perform a market conduct examination of, among other entities, any authorized insurer, to determine compliance with applicable provisions of the workers' compensation law and the Insurance Code.[8] The costs of the examination are to be paid by the subject entity.[9] Section 624.3161, F.S., authorizes the OIR to

[1] Section 20.121(3)(a), F.S. The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the OIR for purposes of rulemaking. Further, the Commission appoints the commissioner of the OIR.
[2] Section 624.418, F.S.
[3] Section 624.316(1)(a), F.S.
[4] Section 624.318(2), F.S.
[5] Section 624.316(2)(a), F.S.
[6] Section 624.316(2)(f), F.S.
[7] Section 624.316(2)(b), F.S.
[8] Section 624.3161(1), F.S.
[9] Section 624.3161(4), F.S.

subject any authorized insurer to a market conduct examination after a hurricane if the insurer, at any time more than 90 days after the end of the hurricane, is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane-related property insurance claims filed to the number of property insurance policies in force.[10]

The OIR must subject any authorized insurer to a market conduct examination after a hurricane if the insurer, at any time more than 90 days after the end of the hurricane:

- Is among the top 20 percent of insurers based upon a calculation of the ratio of consumer complaints made to the DFS to hurricane-related claims;
- Is among the top 20 percent of insurers based upon a calculation of the ratio of hurricane claims closed without payment to the insurer's total number of hurricane claims on policies providing wind or windstorm coverage;
- Has made significant payments to its managing general agent since the hurricane; or
- Is identified by the OIR as necessitating a market conduct exam for any other reason.[11]

The relevant criteria under ss. 624.3161 and 624.316, F.S., are to be applied to the market conduct examination after a hurricane.[12] Such market conduct examination, if any, must be started within 18 months after the landfall of the related hurricane.[13] The insurer's managing general agent must be included in the market conduct examination as if it were the insurer.[14]

If a market conduct examination reveals that the "insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders," the OIR may order the insurer to file its claims-handling practices and procedures with the OIR for review and inspection.[15] The practices and procedures are to be held by the OIR for 36 months and are considered public records, not trade secrets, during the 36-month period.[16] The term "claims-handling practices and procedures" is defined as "any policies, guidelines, rules, protocols, standard operating procedures, instructions, or directives that govern or guide how and the manner in which an insured's claims for benefits under any policy will be processed."[17]

Annual Statement and Other Information

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the OIR containing various financial data, including audited financial statements, actuarial opinions, and certain claims data.[18] Each year, insurers must file an annual statement covering the preceding calendar year on or before March 1.[19] Quarterly

[10] Section 624.3161(7)(a), F.S.
[11] Section 624.3161(7)(b), F.S.
[12] Section 624.3161(7), F.S.
[13] *Id.*
[14] *Id.*
[15] Section 624.3161(6), F.S.
[16] *Id.*
[17] *Id.*
[18] Section 624.424, F.S.
[19] Section 624.424(1)(a), F.S.

statements covering each period ending on March 31, June 30, and September 30 must be filed within 45 days after each such date.[20]

In 2021, the Legislature enacted legislation[21] to assist the OIR and the Legislature in identifying current and emerging property insurance litigation trends that are cost drivers adversely affecting insurance rates. As of January 1, 2022, each authorized insurer or insurer group issuing personal lines or commercial lines residential property insurance policies in this state must provide specific pieces of data regarding closed claims to the OIR on an annual basis.[22] The report must include, excluding liability only claims, the following information on a per claim basis:

- Claim identification number;
- Type of policy;
- Date, location, and type of loss;
- Name and type of vendors utilized for mitigation, repair, or replacement;
- Dates of when the claim was made; initially closed; most recently reopened, if applicable; when a supplemental claim was made, if applicable; and most recently closed, if different from the initial date the claim was closed;
- Name of the public adjuster, if any;
- Name and Florida Bar number of the claimant's attorney, if any;
- Total amounts that the insurer paid for indemnity, loss adjustment expenses,[23] and insured's attorney fees, including any contingency risk multiplier[24] requested by the attorney; and
- Any other information deemed necessary by the Financial Services Commission to provide the OIR with the ability to track litigation and claims trends occurring in the property market.[25]

Section 624.424(10), F.S., requires insurers and insurer groups doing business in Florida to file quarterly reports with the OIR. These reports, also known as QUASR reports, must include the following information for each county in Florida, compiled on a quarterly basis:

- The total number of policies in force at the end of each month;
- The total number of policies canceled;
- The total number of policies nonrenewed;
- The number of policies canceled due to hurricane risk;
- The number of policies nonrenewed due to hurricane risk;
- The number of new policies written;
- The total dollar value of structure exposure under policies that include wind coverage;
- The number of policies that exclude wind coverage;
- Number of claims open each month;
- Number of claims closed each month;

[20] *Id.*
[21] Chapter 2021-77, L.O.F.
[22] Section 624.424(11), F.S.
[23] Loss adjustment expenses are the costs associated with investigating and adjusting losses or insurance claims. IRMI, https://www.irmi.com/term/insurance-definitions/loss-adjustment-expense (last visited January 31, 2024).
[24] A contingency risk multiplier is a multiplier applied to attorney fees that reflects the risk of attorneys accepting, on a contingency fee basis, cases that may be difficult to win. *See e.g., Joyce v. Federated Nat'l Ins. Co.*, 228 So.3d 1122 (Fla. 2017).
[25] Section 624.424(11, F.S.

- Number of claims pending each month; and
- Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

The OIR must aggregate on a statewide basis the data submitted and make such data publicly available on the OIR website within one month after each quarterly and annual filing.[26] The information must be published on the OIR website within one month after each quarterly and annual filing.[27] This information is not a trade secret as defined in s. 688.002(4), F.S., or s. 812.081, F.S., and is not subject to the public records exemption for trade secrets provided in s. 119.0715, F.S.[28] The OIR uses this data to track market trends and shares it with the Florida Division of Emergency Management after natural disasters to help determine where emergency response is most necessary.[29]

Nonrenewal of Residential Property Insurance Policies

An insurer that plans to nonrenew more than 10,000 residential property insurance policies within a 12-month period must give written notice to the OIR for informational purposes 90 days before the issuance of such notices of nonrenewal.[30] The notice provided to the OIR must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders.[31]

Public Housing Authorities Self-Insurance Funds

Two or more public housing authorities may form a self-insurance fund as to any one or more risks. Such self-insurance fund that is created must:

- Have annual normal premiums in excess of five million dollars;
- Use a qualified actuary to determine rates and annually submit to the OIR a certification by the actuary that the rates are actuarially sound and are not inadequate;
- Use a qualified actuary to establish reserves for loss and loss adjustment expenses and annually submit to the OIR a certification by the actuary that the loss and loss adjustment expense reserves are adequate;
- Maintain a continuing program of excess insurance coverage and reserve evaluation to protect the financial stability of the fund in an amount and manner determined by a qualified and independent actuary. At a minimum, the program must:
  - Purchase excess insurance from authorized insurance carriers or eligible surplus lines insurers;
  - Retain a per-loss occurrence that does not exceed $350,000;
- Submit to the OIR annually an audited fiscal year-end financial statement by an independent certified public accountant;

[26] Section 624.424(10)(b), F.S.
[27] *Id.*
[28] *Id.*
[29] Office of Insurance Regulation, *Amended Agency Analysis of SB 1622* (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[30] Section 624.4305, F.S.
[31] *Id.*

- Have a governing body which is comprised entirely of commissioners of public housing authorities that are members of the fund or persons appointed by the commissioners;
- Use knowledgeable persons to administer the fund in the areas of claims administration, claims adjusting, underwriting, risk management, loss control, policy administration, financial audit, and legal areas;
- Submit to the OIR copies of contracts used for its members that clearly establish the liability of each member for the obligations of the fund; and
- Annually submit to the OIR a certification by the governing body of the fund that, to the best of its knowledge, the requirements of this section are met.

A business entity in which a public housing authority holds an ownership interest or participates in its governance may join a self-insurance fund solely to insure risks related to public housing.

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[32] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.[33] Rather, surplus lines insurers are "unauthorized" insurers,[34] but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.[35]

Notice of Cancellation, Nonrenewal, or Renewal of Insurance Policies

The requirements for an authorized insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 627.4133, F.S. The specific notice depends on the type of insurance provided and the particular circumstances of the subject policy.

For an authorized insurer writing personal lines residential or commercial lines residential property insurance policies are generally subject to the following requirements:

- The insurer must give written notice of cancellation, nonrenewal, or termination at least 120 days prior to the effective date of the cancellation, nonrenewal, or termination and the notice is required to include the reason for nonrenewal, cancellation, or termination;[36] and

[32] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.
[33] Section 624.09(1), F.S.
[34] Section 624.09(2), F.S.
[35] Section 626.913(4), F.S.
[36] Section 627.4133(2)(b), F.S.

- The insurer must give written notice of renewal premium at least 45 days prior to the renewal premium[37] and the notice of renewal premium must specify certain information, including the dollar amount of any premium increase that is due to an approved rate increase and the total dollar amount that is due to coverage changes.[38]

An authorized insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:

- For a period of 90 days after the property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation;[39] and
- Until the earlier of when property has been repaired or one year after the insurer issues the final claim payment, if such property was damaged by any covered peril, but was not damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation.[40]

The requirements for a surplus lines insurer to provide notice of cancellation, nonrenewal, or renewal premium are set forth in s. 626.9201, F.S. A surplus lines insurer issuing a policy providing coverage for property insurance must give the insured at least 45 days' advance written notice of nonrenewal that includes the reasons why the policy is not to be renewed.[41]

A surplus lines insurer issuing a policy providing coverage for property insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

- If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation;[42] and
- If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given.[43]

Rate Standards

Part I of ch. 627, F.S., the Rating Law,[44] governs property, casualty, and surety insurance covering the subjects of insurance resident, located, or to be performed in this state.[45] The rating law provides that the rates for all classes of insurance it governs may not be excessive,

[37] Section 627.4133(2)(a), F.S.
[38] Section 627.4133(7), F.S.
[39] Section 627.4133(2)(e)1.a., F.S.
[40] Section 627.4133(2)(e)1.b., F.S.
[41] Section 626.9201(1), F.S.
[42] Section 626.9201(2)(a), F.S.
[43] Section 626.9201(2)(b), F.S.
[44] Section 627.011, F.S.
[45] Section 627.021(1), F.S.

inadequate, or unfairly discriminatory.[46] Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies that "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.[47]

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a "file and use" rate filing, or within 30 days after the effective date of a new rate, which is considered a "use and file" rate filing.[48] Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- The cost of medical services, if applicable;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.[49]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.50 Citizens is not a private insurance company.51 Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[52]

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine member Board of Governors that administers its Plan of Operations. The Plan of Operations

[46] Section 627.062(1), F.S.
[47] Section 627.041, F.S.
[48] Section 627.062, F.S.
[49] Section 627.062(2)(b), F.S.
[50] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[51] Section 627.351(6)(a)1., F.S.
[52] Section 2, ch. 2002-240, L.O.F.

is reviewed and approved by the Financial Services Commission.[53] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[54] The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.[55]

Citizens "Glidepath" Rates

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006.[56] In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[57] In 2021, the Legislature revised this glidepath to increase it one percent per year to up to 15 percent, as follows:

- 11 percent for 2022;
- 12 percent for 2023;
- 13 percent for 2024;
- 14 percent for 2025; and
- 15 percent for 2026 and all subsequent years. [58]

The implementation of these increases cease when Citizens has achieved actuarially sound rates.[59] In addition to the overall glidepath rate increase, Citizens may increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund (FHCF) coverage, pursuant to s. 215.555(5)(b), F.S.[60] The glidepath does not apply to policies written on or after November 1, 2023, that:

- Do not cover a primary residence;
- Are new policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the OIR to be unsound or an insurer placed in receivership under chapter 631; or
- Are subsequent renewals of those policies.[61]

Instead, the rate standard for such policies prohibits a rate lower than the previous year's rate charged by Citizens and allows a rate increase of greater than 50 percent.

[53] Section 627.351(6)(a)2., F.S.
[54] Section 627.351(6)(c)4.a., F.S.
[55] Section 627.351(6)(c)4., F.S.
[56] Section 15, ch. 2006-12, L.O.F.
[57] Section 10, ch. 2009-87, L.O.F.
[58] Section 627.351(6)(n)5., F.S.
[59] Section 627.351(6)(n)7., F.S.
[60] Section 627.351(6)(n)6., F.S.
[61] Section 627.351(6)(n)8., F.S.

Homeowners' Policies; Offer of Replacement Cost Coverage

An insurer may not refuse to issue or refuse to renew a homeowner's policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.[62] If the roof is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof as a condition of issuing or renewing a policy.[63] The insurer may not refuse to issue or refuse to renew a homeowner's policy solely because of roof age if an inspection of the roof performed by an authorized inspector indicates that the roof has 5 years or more of useful life remaining.[64] A roof's age is calculated using the last date on which 100 percent of the roof's surface area was built or replaced in accordance with the building code in effect at that time or the initial date of a partial roof replacement when subsequent partial roof builds or replacements were completed that resulted in 100 percent of the roof's surface area being built or replaced.[65]

An "authorized inspector" is an inspector approved by the insurer and who is:
- A home inspector licensed under s. 468.8314;
- A building code inspector certified under s. 468.607;
- A general, building, or residential contractor licensed under s. 489.111;
- A professional engineer licensed under s. 471.015;
- A professional architect licensed under s. 481.213; or
- Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a general inspection of a residential structure insured with a homeowner's insurance policy.

Insurance Holding Companies; Registration; Regulation

An authorized insurer that is a member of an insurance holding company must register and file a registration statement with the OIR each year.[66] The Financial Services Commission has authority to adopt rules establishing the information and manner in which such registered insurers and their affiliates are regulated.[67] The rules do not apply to foreign insurers domiciled in states that are currently accredited by the National Association of Insurance Commissioners (NAIC).[68] The rules must include all requirements and standards of ss. 4 and 5 of the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2010.

[62] Section 627.7011(5)(b), F.S.
[63] Section 627.7011(5)(c), F.S.
[64] *Id.*
[65] Section 627.7011(5)(d), F.S.
[66] Section 628.801(1), F.S.
[67] *Id.*
[68] *Id.*

NAIC Model Acts

The NAIC is a voluntary association of insurance regulators from all 50 states.[69] The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.[70]

Model Holding Company Act and Regulation

The NAIC has adopted the Insurance Holding Company System Regulatory Model Act[71] and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions.[72] The provisions of the model acts provide insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.[73]

Reciprocal Insurers

A reciprocal insurance exchange is a form of insurance organization in which individuals and businesses exchange insurance contracts and spread the risks associated with those contracts among themselves.[74] Policyholders of a reciprocal insurance exchange are referred to as subscribers.[75] In Florida, reciprocal insurers are regulated pursuant to ch. 629, F.S. Florida law provides that a "reciprocal insurer" is "an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves"[76] and:

> "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.[77]

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[69] National Association of Insurance Commissioners (NAIC), *Frequently Asked Questions*, https://content.naic.org/sites/default/files/about-faq.pdf (last visited Jan. 31, 2024).
[70] *Id.*
[71] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Regulatory Act*, https://content.naic.org/sites/default/files/MO440_0.pdf (last visited Jan. 31, 2024).
[72] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions*, https://content.naic.org/sites/default/files/MO450_0.pdf (last visited Jan. 31, 2024).
[73] NAIC Model Laws, Regulations, Guidelines and Other Resources – Summer 2021, *Insurance Holding Company System Regulatory Act*, Section 6B, https://content.naic.org/sites/default/files/MO440_0.pdf (last visited Jan. 31, 2024).
[74] *What Is a Reciprocal Insurance Exchange?* Investopedia https://www.investopedia.com/terms/r/reciprocal-insurance-exchange.asp (last visited Jan. 31, 2024).
[75] *Id.*
[76] Section 629.021, F.S.
[77] Section 629.011, F.S.

A reciprocal insurer may transact any kind of insurance other than life insurance or title insurance.[78] A domestic reciprocal insurer must maintain surplus funds of not less than $250,000 and must, when first authorized, have an expendable surplus of not less than $750,000.[79] A domestic reciprocal insurer may organize with twenty-five or more persons domiciled in Florida making application to the OIR for a certificate of authority to transact insurance and file a declaration setting forth:

- The name of the insurer;
- The location of the insurer's principal office, which must be the same as that of the attorney and must be maintained within this state;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original subscribers;
- The designation and appointment of the proposed attorney and a copy of the power of attorney;
- The names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if other than a corporation;
- The powers of the subscribers' advisory committee, and the names and terms of office of its members;
- That all moneys paid to the reciprocal must, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A copy of the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at an adequate approved rate;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand; and
- A copy of each policy, endorsement, and application form it proposes to use.

When the declaration is filed, the attorney must file a $100,000 bond in favor of the state for the benefit of all persons damaged as a result of a breach by the attorney of the conditions of his or her bond.[80]

Each domestic reciprocal insurer must have a subscribers' advisory committee. The advisory committee exercising the subscribers' rights must be selected under such rules as the subscribers adopt.[81] Not less than two-thirds of such committee must be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.[82] The committee must:

- Supervise the finances of the insurer;
- Supervise the insurer's operations to assure conformity with the subscribers' agreement and power of attorney;

[78] Section 629.041, F.S.
[79] Section 629.071, F.S.
[80] Section 629.121, F.S.
[81] Section 629.201(1), F.S.
[82] Section 629.201(2), F.S.

- Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- Have such additional powers and functions as may be conferred by the subscribers' agreement.[83]

Power of Attorney

The rights and powers of the attorney of a reciprocal insurer are as provided in the power of attorney given to it by the subscribers.[84] Currently, the power of attorney must set forth:

- The powers of the attorney;
- That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
- The general services to be performed by the attorney;
- The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
- Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than five times nor more than ten times the premium or premium deposit stated in the policy.[85]

Under current law, the power of attorney may:

- Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
- Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
- Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
- Contain other lawful provisions deemed advisable.

The terms of any power of attorney or agreement collateral must be reasonable and equitable, and no such power or agreement may be used or be effective in Florida unless filed with the OIR.[86]

Fiduciary Duty

Under s. 673.3071, F.S., fiduciary means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument. Under Florida's Trust Code, a fiduciary means "a person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary, who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.[87] Furthermore, the holder of a power to direct is liable for any loss that results from breach of fiduciary duty.[88]

[83] Section 629.201(3), F.S.
[84] Section 629.101(1), F.S.
[85] Section 629.101(2), F.S.
[86] Section 629.101(3), F.S.
[87] Section 736.0808(4), F.S.
[88] *Id.*

Fiduciary duty is defined as "someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes the duties of good faith, loyalty, due care, confidentiality, prudence and disclosure".[89]

Fiduciary duty is often found in the following relationships: attorney-client; executor-heir; guardian-ward; agent-principal; trustee-beneficiary; corporate officer-shareholder. Depending upon particular facts, lenders, clerics and spouses may share a fiduciary duty.[90] A fiduciary duty may arise expressly or be implied by law.[91]

The Florida Supreme Court (Court), in *Quinn v. Phipps* (1927), held that a fiduciary duty "exists, and that relief is granted, *in all cases* in which influence has been acquired and abused – in which confidence has been reposed and betrayed."[92] In addition, the Court, characterized the fiduciary relationship as follows:

> [T]he relation and duties involved need not be legal; they may be moral, social, domestic, or personal. *If a relation of trust and confidence exists between the parties (that is to say, where confidence is reposed by one party and a trust accepted by the other, or where confidence has been acquired and abused), that is sufficient as a predicate for relief*. The origin of the confidence is immaterial. [italics in original, quoting *Quinn*][93]

The Court further stated: "…as the relationship and duties do not have to be legal, "[A] "fiduciary relationship may be implied by law, and such relationships are 'premised upon the *specific factual situation* surrounding the transaction and the relationship of the parties."[94]

According to the Florida Bar, "[w]hen a fiduciary relationship exists, the fiduciary is under a duty to act for the benefit of the beneficiary only as to matters within the scope of the fiduciary relationship. No duty attaches to matters beyond the scope of the fiduciary relationship."[95] Furthermore, "[w]hile the parameters of the fiduciary relationship may be undefinable, the relationship may arise expressly, through contracts and statutes, or may be implied under the specific circumstances of the parties' relationship, which often requires a factually intensive inquiry."[96]

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[89] Cornell Law School, Legal Information Institute, *Fiduciary Duty*, *Overview*, https://www.law.cornell.edu/wex/fiduciary_duty (last visited Feb. 1, 2024). See also, Black's Law Dictionary, 2nd Ed., *available at* https://thelawdictionary.org/fiduciary-duty/ (last visited Feb. 1, 2024).
[90] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024).
[91] *Id* at *How Fiduciary Duty Arises.*
[92] *Orlinsky v. Patraka*, 971 So. 2d 796 (Fla. Dist. Ct. App. 2008)
[93] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024). *See* fn 15: *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 20002) (emphasis added). *In Quinn v. Phipps*, 113 So. 419, 421, 425-426 (Fla. 1927), the Florida Supreme Court addressed the fiduciary relationship in the context of the development of equity.
[94] *Orlinsky v. Patraka*, 971 So. 2d 796 (Fla. Dist. Ct. App. 2008)
[95] Guffey-Landers, et al., *Understanding Fiduciary Duty*, The Florida Bar, Vol. 84, No. 3 (March 2010), p. 20, https://www.floridabar.org/the-florida-bar-journal/understanding-fiduciary-duty/ (last visited Feb. 1, 2024).
[96] *Id.*

Power of Attorney and Attorney in Fact

Chapter 709, F.S., relates to the powers of attorney and similar instruments. A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as otherwise provided in s. 708.08, F.S."; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity. A durable power of attorney is exercisable as of the date of execution. However, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in s. 744.102(12)(a), F.S., the durable power of attorney is exercisable upon the delivery of affidavits to the third party.[97]

An attorney in fact is a person who is authorized to represent someone else in business, financial, and private matters, usually through a power of attorney.[98] An attorney in fact is not necessarily an attorney, but they must act in the best interests of the principal and follow any instructions or guidelines set forth in the power of attorney.[99] An attorney in fact is not the same as a lawyer or attorney. A lawyer or attorney is professional who is duly licensed to practice law and offers advice to their client and represents them in a courtroom. While an attorney in fact has been given the authority to act on, often making decisions for, the behalf of another person.[100]

An attorney in fact must be a natural person who is 18 years of age or older, is of sound mind, or a financial institution, as defined in ch. 655, F.S., with trust powers having a place of business in this state and authorized to conduct trust business in this state. A not-for-profit corporation, organized for charitable or religious purposes in this state, which has qualified as a court-appointed guardian prior to January 1, 1996, and which is a tax-exempt organization under 26 U.S.C. s. 501(c)(3), may also act as an attorney in fact. Notwithstanding any contrary clause in the written power of attorney, no assets of the principal may be used for the benefit of the corporate attorney in fact, or its officers or directors.[101]

An attorney in fact is a fiduciary who must observe the standards of care applicable to trustees as described in s. 736.0901, F.S., except as otherwise provided in s. 709.08, F.S.[102]

III. Effect of Proposed Changes:

Market Conduct Examinations

Section 1 amends s. 624.3161, F.S., to authorize the Office of Insurance Regulation (OIR) to conduct market conduct examinations of the attorney in fact of each reciprocal insurer.

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[97] Section 709.08(1) and (4)(c) and (d), F.S.
[98] Adam Hayes, Investopedia, *Attorney-in-Fact: Definition, Types, Powers and Duties* (August 2, 2023), https://www.investopedia.com/terms/a/attorneyinfact.asp (last visited Feb. 1, 2024).
[99] *Id.*
[100] *Id.*
[101] Section 709.08, F.S.
[102] Section 709.08(8), F.S.

Annual Statement and Other Information

Section 2 amends s. 624.424, F.S., to require each insurer and insurer group to file the required supplemental reports on personal lines and commercial lines property insurance monthly, rather than quarterly. Requires such information to be broken down by zip code, rather than by county.

Nonrenewal of Residential Property Insurance Policies

Section 3 amends s. 624.4305. F.S., to provide the Financial Services Commission (Commission) the authority to adopt rules to administer this section. The section requires any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period to give the OIR at least 90 days written notice before issuing notices of nonrenewal.

Public Housing Authorities Self-Insurance Funds

Section 4 – Effective upon becoming a law, amends s. 624.46226, F.S., to revise financial requirements for a public housing self-insurance fund (fund) to:

- Specify that reinsurance may be used as part of its program to protect the financial stability of the fund;
- Require a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by a qualified actuary;
- Require the fund's continuing program of excess insurance coverage and reinsurance be certified by a qualified and independent actuary as to the program's adequacy;
- Include reinsurance or excess insurance from authorized insurance carriers or eligible surplus lines insurers; and
- Eliminate the requirement to retain a per-loss occurrence that does not exceed $350,000.

Notice of Cancellation or Nonrenewal by Surplus Lines Insurers

Section 5 amends s. 626.9201, F.S., to provide that, upon a declaration of an emergency pursuant to s. 252.36, F.S., and the filing of an order by the Commissioner of Insurance Regulation, a surplus lines insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in the area.

The bill provides the following exceptions, allowing the surplus lines insurer to cancel the policy:

- Upon 10 days' notice for nonpayment of premium.
- Upon 45 days' notice:
  - For a material misstatement or fraud;
  - If the insurer determines the insured has unreasonably caused a delay in repairs;

- If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, and the insured fails within 30 calendar days to provide a response; or
- If the insurer has paid policy limits.

If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 day notice to the insured that the insurer intends to nonrenew the policy after 90 days after the dwelling or residential property has been repaired.

Other than the specified limitations proscribed within this section, the insurer is not prevented from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would have otherwise canceled or nonrewed.

The bill provides the Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this requirement.

Rate Standards

Section 6 amends s. 627.062, F.S., to repeal current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable.

Citizens Property Insurance Corporation

Section 7 amends s. 627.351, F.S., to repeal provisions adopted last legislative session that allow the Citizens Property Insurance Corporation (Citizens) to apply a different methodology to polices which, immediately prior to being insured by Citizens, were insured by an insurer determined by the OIR to be unsound or that was placed in receivership. Rates for such policies, if they cover a primary residence, will be subject to the Citizens rate "glidepath" which will restrict rate increases to 13 percent for 2024, rather than a prohibition on rate decreases and a limit of 50 percent on rate increases at issuance at renewal. If such policies do not cover a primary residence, the prohibition on rate decreases and the 50 percent limit on rate increases will apply.

Homeowners' Policies; Offer of Replacement Cost Coverage

Section 8 amends s. 627.7011, F.S., to provide that a licensed roofing contractor is considered an "authorized inspector" to provide roof inspections, at the expense of the homeowner, to determine if an insurer may require the replacement of a roof that is at least 15 years old.

Scope of Part

Section 9 amends s. 628.011, F.S., to remove the word "stock" from the phrase "domestic stock insurers."

Investigation of Proposed Organizations

Section 10 amends s. 628.061, F.S., to provide the OFR is authorized to conduct an investigation in connection with any proposal to organize or incorporate a domestic insurer. The OFR is required to investigate:

- The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact;
- The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact; and
- The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Insurance Holding Companies; Registration; Regulation

Section 11 amends s. 628.801, F.S., to provide the Commission may adopt rules for the filing of the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the National Association of Insurance Commissioners (NAIC), as adopted in December 2020.

Reciprocal Insurers

Definitions

Section 12 amends s. 629.011, F.S., to add definitions for the terms "affiliated person," "attorney in fact," "controlling company," and "reciprocal insurer."

"Affiliated person" of another person means any of the following:

- The spouse of the other person;
- The parents of the other person, and their lineal descendants, and the parents of the other person's spouse, and their lineal descendants;
- A person who directly or indirectly owns or controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the other person;
- A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with power to vote, by the other person;
- A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person;
- A director, an officer, a trustee, a partner, an owner, a manager, a joint venture, an employee, or other person performing duties similar to those of persons in such positions;
- If the other person is an investment company or any member of an advisory board of such company;
- If the other person is an unincorporated investment company not having a board of directors, the depositor of such company;
- A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:
    - Securities of an attorney in fact or controlling company that is a stock corporation; or

- An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

"Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

"Controlling company" means a person, a corporation, a trust, a limited liability company, an association, or another entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

"Reciprocal insurer" is defined as an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

The bill retains the current definition of "reciprocal insurance."

"Reciprocal Insurer" Defined

Section 13 repeals s. 629.021, F.S., defining "reciprocal insurer."

Attorney

Section 14 repeals s. 629.061, F.S., providing requirements related to the attorney in fact.

Organization of Reciprocal Insurer

Section 15 amends s. 629.081, F.S., to provide for the permit application by those domiciled in this state who wish to organize as a domestic reciprocal insurer. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the OIR.

Reciprocal insurer applicants must apply to the OIR to receive a permit. The permit application must be in writing and in accordance with forms prescribed by the OIR. The reciprocal insurance permit application must include the following:

- The name of the proposed reciprocal insurer, in accordance with s. 629.051, F.S.;
- The location of the insurer's principal office, which shall be the same as that of the proposed attorney in fact and which shall be maintained in Florida;
- The kinds of insurance proposed to be transacted;
- The names and addresses of the original 25 or more subscribers;
- The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney;
- The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or if other than a corporation, as well as the background information as specified in s. 629.227, F.S., for all officers, directors and in equivalent positions of the proposed attorney in fact, as well as, for any person with an ownership interest of 10 percent or more in the proposed attorney in fact;

- The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified;
- The proposed charter powers of the subscribers' advisory committee, and the names and terms of office of the members thereof as well as the background information as specified in s. 629.227, F.S., for each proposed member;
- A copy of the proposed subscribers' agreement; and
- A copy of each policy, endorsement, and application form the insurer proposes to issue or use;

The filing must be accompanied by the application fee required under s. 624.501(11)(a), F.S., and such other pertinent information and documents reasonably requested by the OIR.

The OIR is authorized to evaluate and grant or deny the permit application in accordance with ss. 628.061 and 628.071, F.S. and other relevant provisions of the code.

Reciprocal Certificate of Authority

Section 16 amends s. 629.091, F.S., to provide the application requirements for a certificate of authority as a domestic reciprocal insurer. A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit. Such application must include:

- Executed copies of any proposed or draft documents required as part of the permit application;
- A statement affirming that all moneys paid to the reciprocal insurer must, after deducting any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at the rate that was filed with and approved by the OIR;
- A copy of the required bond;
- A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the required surplus is on hand; and
- Such other pertinent information or documents as reasonably requested by the OIR.

If the reciprocal insurer intends to issue nonassessable policies under the certificate of authority, and the OIR determines the reciprocal insurer meets the legal requirements to issue such polices, including surplus requirements, the OIR shall grant a certificate of authority to the reciprocal authority. The certificate of authority is issued in the name of the reciprocal insurer to its attorney in fact.

Continued Eligibility for Certificate of Authority

Section 17 creates s. 629.094, F.S., to provide that in order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer must continue to meet all conditions required under the chapter and the rules for the initial applications for a permit and certificate of authority.

Power of Attorney

Section 18 amends s. 629.101, F.S., to provide that the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

Acquisitions

Section 19 creates s. 629.225, F.S., to provide the provisions of this section apply to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers.

The bill provides requirements regarding the acquisition of 10 percent or more of a reciprocal insurer. To complete such an acquisition, the person seeking to obtain such ownership interest must provide notice of the attorney in fact of the reciprocal insurer within certain time frames, file an application with the OIR containing detailed information about the offer and the person making the offer which will be reviewed pursuant to ch. 120, F.S., and receive OIR approval of the acquisition. The OIR must approve the acquisition if the applicant proves that the acquisition will not jeopardize the financial stability of the attorney in fact or harm the reciprocal insurer's subscribers or public. The bill provides that:

- A person may not acquire, 10 percent or more of the outstanding voting securities of an attorney in fact unless:
  - The person has filed with the OIR and sent to the principal office of the attorney in fact, and any controlling company of the attorney in fact, the subscribers' advisory committee and the domestic reciprocal insurer a letter of notification regarding the transaction no later than five days after any offer is proposed, or no later than five days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. Such notification must be on forms prescribed by the OIR and must contain information necessary to understand the transaction and identify all purchasers and owners involved;
  - The subscribers' advisory committee has provided the required notification, on a form prescribed by the OIR, letting the subscribers know of the filing deadlines for objecting to the acquisition;
  - The person has filed with the OIR an application which contains the required information within 30 days after any offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved; and
  - The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved;
- This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the OIR;
- The OIR may waive or person filing the notice may request that the OIR waive the requirement that the subscribers' advisory committee provide notice to subscribers of the proposed acquisition, if there is no change in ultimate controlling shareholders and their ownership percentages and no unaffiliated parties acquire any interest in the attorney in fact;
- The application must contain the following information:
  - The identity and background information specified each person on whose behalf the acquisition is to be made and any person who controls such other person;
  - The source and amount of the funds to be used in making the acquisition;

  - Any plans made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management;
  - The nature and the extent of the controlling interest which the person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation;
  - The number of shares or other securities which the person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired;
  - Information as to any arrangement with any party with respect to any of the securities of the attorney in fact or controlling company; and
  - The required fee;
- An amendment to the application must be filed with the OIR detailing any changes in facts or the background information detailed in the application;
- The acquisition application must be reviewed pursuant to ch. 120, F.S., the Administrative Procedure Act. The OIR may initiate or by written request conduct a proceeding to consider the appropriateness of the proposed filing. Under this review:
  - Time periods are tolled during the pendency of the proceeding;
  - Written request must be filed within 10 days after the date notice of filing is given, or 10 days after notice of the filing is sent to the subscribers by the subscribers' advisory committee, whichever is later;
  - During the review period by the OIR, any person or affiliated person complying with the filing requirements may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon approval by the OIR;
  - If at any time, the OIR finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the OIR shall immediately order the proposed acquisition disapproved and any further steps to conclude the acquisition ceased;
  - A material change in the operation or management of the attorney in fact or controlling company, unless specifically approved by the OIR, are prohibited;
  - A request for material change may be provided to the OIR by advanced written notice;
  - The OIR may either approve or disapprove a written request for material change, if the request meets or does not meet defined provisions provided in subsection (7);
  - The proceeding must conducted within 60 days after the date of the written request is received by the OIR;
  - The OIR will issue a recommended order within 20 days after the date of the close of the proceedings; and
  - A final order will be issued within 20 days after the date of the recommended order, or if exceptions are filed, within 20 days after the date of the exceptions are filed;
- The OIR may disapprove any acquisition by any person or affiliated person who willfully violates this section or violates the OIR orders related to divestiture or the acquisition of specified additional stock or ownership interest without complying with this section;
- The applicant has the burden of proof;
- The bill provides criteria for the OIR approval of an acquisition, which generally must be given if the OIR finds that the acquisition will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or harm the public;

- Any acquisition contrary to this section is void, as is any vote by a stockholder of record or any other person of any security so acquired;
- OIR approval of an offer or acquisition does not constitute a recommendation by the OIR;
- A presumption of control may be rebutted by filing a valid disclaimer of control with the OIR;
- Authorizes the OIR to order divesture by a person who acquires 10 percent or more of voting securities of an attorney in fact or a controlling company without complying with this section; and
- Authorizes the OIR to suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

A person who violates these provisions commits a third degree felony, punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.[103] The statute of limitations for prosecution of an offense committed under this section is five years.

The term "material change in the operation of the attorney in fact" is defined to mean a transaction that disposes of or obligates five percent or more of the domestic reciprocal insurer.

The term "material change in the management of the attorney in fact" is defined to mean any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate five percent or more of the attorney in fact's capital or surplus.

Background Information

Section 20 creates s. 629.227, F.S., to provide the background information that must be submitted on officers, directors, managers, and those in equivalent positions of the proposed attorney in fact, as well as, for any person with an ownership interest of 10 percent or more. The background information must include a sworn biographical statement providing detailed information of the person's business history over the last 20 years. The information must detail any criminal convictions, license revocation proceedings, bankruptcies, and other specified proceedings that have occurred in the last 10 years. Fingerprints must also be submitted.

Attorney in Fact

Section 21 creates s. 629.2297, F.S., to provide that any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the two-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency:

[103] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

- Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or
- Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law, unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Nonassessable Policies

Section 22 amends s. 629.261, F.S., to provide that upon impairment of the surplus of a nonassessable reciprocal insurer, the OIR must revoke its authorization. Such revocation does not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has been paid. After revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber. Upon revocation of the authority to issue nonassessable policies, the reciprocal insurer may not issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301 apply to such insurer.

Merger or Conversion

Section 23 amends s. 629.291, F.S., to provide requirements for mergers and conversions. The bill provides that a domestic stock insurer may not be converted to a reciprocal insurer. The bill provides that any plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed with the OIR on forms adopted by the Financial Services Commission and must contain such information as the OIR reasonably requires to evaluate the transaction.

The bill provides that an assessable reciprocal insurer may be converted to a nonassessable reciprocal insurer if the subscriber's advisory committee approves, the attorney in fact submits the required application, and the OIR approves.

Rulemaking Authority

Section 24 creates s. 629.525, F.S., to grant rulemaking authority to the Financial Services Commission to adopt, amend, or repeal rules necessary to implement the chapter.

Conforming Changes

Sections 9, 10, 25, and 26 amend ss. 628.011 (Scope of Part), 628.061 (Investigation of Proposed Organization), 163.01 (Florida Interlocal Cooperation Act of 1969), and 626.9531 (Identification of Insurers, Agents, and Insurance Contracts), F.S., respectively, to conform those sections based on changes made by the bill.

Effective Date

Section 27 provides that, except as expressly provided, the bill becomes effective on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill is intended to have a positive impact on consumers.
Insurers will need to revise current procedures in order to comply with the provisions of the bill. The cost of such revisions is indeterminate.

Applicants are subject to existing filing and application fees under s. 624.501(1)(a), F.S.

Applicants may experience out of pocket expenses for any fingerprint or state or federal background check required under the bill. The cost for a state and national criminal history record check is $37.25 per name. In addition, the Florida Department of Law Enforcement (FDLE) reports Livescan Services may assess additional processing fees,[104] which may require an applicant to pay additional fees.[105]

[104] *Id.*
[105] *Id.*

C. Government Sector Impact:

The bill has an indeterminate impact to state revenues and expenditures.

The Office of Insurance Regulation may experience an increase in filings and applications, resulting in a positive, yet indeterminate, impact to state revenues. The bill makes numerous changes that will require systems and process changes in the OIR. However, the OIR has indicated any technology updates can be absorbed within existing resources.[106]

The bill may have a positive impact to the Florida Department of Law Enforcement's Operating Trust Fund as the cost for a state and national criminal history record check is $37.25 per name submitted. The Federal Bureau of Investigation (FBI) receives $13.25 and, pursuant to s. 943.053(3)(e), F.S., the FDLE retains $24.[107]

The bill creates a new third degree felony for violation of s. 629.225, F.S., which is punishable by up to five years in prison. The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has not met to determine the impact of this bill. The bill has a positive/negative indeterminate impact, meaning the final direction of the impact is unknown, at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the Florida Department of Law Enforcement (FDLE), a sex offender registry check, local criminal records check, and a domestic violence check.[108] Level 2 screenings are more thorough because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE, a national criminal history records check through the Federal Bureau of Investigation (FBI), and a domestic violence check. It may also include local criminal records checks. A Level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.[109]

If it is the intent of the bill to require applicants to undergo finger-print based, state and national criminal history record checks (Level 2), during the application process, the FDLE recommends

[106] Email from Kevin Jacobs, Deputy Chief of Staff, Office of Insurance Regulation to Michelle Sanders, Legislative Analyst, Senate Appropriations Committee on Agriculture, Environment, and General Government (Feb. 1, 2024).
[107] The Florida Department of Law Enforcement, *Senate Bill Analysis 1622* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).
[108] Section 435.03, F.S.
[109] Section 435.04, F.S.

stating so specifically within each applicable section of the bill. To facilitate state and national criminal history record checks, the following language should be included to ensure compliance with federal law and the United States Department of Justice (DOJ)-established criteria for the submission of fingerprints to the FBI's Criminal Justice Information Services (CJIS) Division for a national criminal history background check.[110]

> An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.
>
> Fees for state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e).[111]

The FDLE notes that a statute cannot be approved for access to FBI criminal history record information (CHRI) unless all criterion specified within Public Law 92-544 are satisfied which includes a review of whether the population(s) (i.e., categories of individuals) being screened is clearly defined and the state agency responsible for conducting the fingerprint-based background check and receiving the CHRI from the FBI is identified within the statute(s). As written, the FDLE opines "the FBI will likely deny the request for fingerprint-based access to national criminal history record check information."[112]

The FDLE recommends further defining and clarifying the terms "Affiliated Person" within s. 6239.011, F.S., and "Controlling Company" within s. 629.011, F.S., as the FBI considers the terms overly broad and undefined.[113]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161, 624.424, 624.4305, 624.46226, 626.9201, 627.062, 627.351, 627.7011, 628.011, 628.061, 628.801, 629.011, 629.081, 629.091, 629.101, 629.261, 629.291, 163.01, and 626.9531.

This bill creates the following sections of the Florida Statutes: 629.094, 629.225, 629.227, 629.229, and 629.525.

This bill repeals the following sections of the Florida Statutes: 629.021 and 629.061.

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[110]The Florida Department of Law Enforcement, *Senate Bill Analysis 1622* (Jan. 26, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).
[111] *Id.*
[112] *Id.*
[113] *Id.*

IX. Additional Information:

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

CS by Fiscal Policy Committee on February 27, 2024:
The committee substitute provides:

- That the requirement each insurer file the supplemental reports monthly, rather than quarterly, starts on January 1, 2025.
- That if an averaged model is used in ratemaking, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with an actuarial justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair.
- That a licensed roofing contractor is considered an "authorized inspector" for purposes of s. 672.7011(5), F.S., to provide roof inspections to determine if an insurer may require the replacement of a roof that is at least 15 years old at the homeowner's expense.
- Explicit fingerprinting language suggested by FDLE on lines 942-951 of the amendment.
- Technical changes and rewording.

CS by Banking and Insurance Committee on January 29, 2024:
The committee substitute removed the entire substance of the bill made numerous changes to the wording and organization of the bill and:

- Revised the provision in section 5 of the bill regarding cancellation or nonrenewal by a surplus lines insurer after a hurricane, to include damage that is the result of wind loss;
- Repealed current law allowing an insurer, with respect to residential property insurance rate filings, to use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable;
- Created a new section of statute, s. 629.229, F.S., providing for regulation of the attorney in fact, officers, and directors;
- Removed sections 13, 14, 15, 17, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 36, 37, 39, 40, 41, 44, 45, and 47 from the bill; and
- Changed the effective date from July 1, 2025 to July 1, 2024.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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	.	
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The Committee on Fiscal Policy (Trumbull) recommended the following:

Senate Amendment (with title amendment)

Delete lines 177 - 1245

and insert:

(10)(a) By January 1, 2025, and each month thereafter, each insurer or insurer group doing business in this state shall file on a monthly ~~quarterly~~ basis ~~in conjunction with financial reports required by paragraph (1)(a)~~ a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial

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lines residential property insurance policies in this state. The supplemental report must ~~shall~~ include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report must ~~shall~~ include the following information for each zip code ~~county on a monthly basis~~:

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000



residential property insurance policies in this state within a 12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. The commission may adopt rules to administer this section.

Section 4. Effective upon becoming law, paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected

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by the administrator, ratified by the governing body, and certified by an independent qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified and independent actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written

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notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than



nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and

(c)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in this state.

2. However, an insurer or its agent may cancel or nonrenew such a policy before the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property;

(III) If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, sent

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by certified mail, return receipt requested, and the insured fails within 30 calendar days to provide information that is responsive to the inquiry to either the address or e-mail account designated by the insurer; or

(IV) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations of subparagraph 1.

5. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

Section 6. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses and windstorm losses.

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection



Methodology to be accurate or reliable pursuant to s. 627.0628. If an averaged model is used under this section, the same averaged model must be used throughout this state. If a weighted average is used, the insurer must provide the office with an actuarial justification for using the weighted average which shows that the weighted average results in a rate that is reasonable, adequate, and fair.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are



filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.



6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or~~

~~c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

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9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Paragraph (a) of subsection (5) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5)(a) As used in this subsection, the term "authorized inspector" means an inspector who is approved by the insurer and who is:

1. A home inspector licensed under s. 468.8314;

2. A building code inspector certified under s. 468.607;

3. A general, building, or residential contractor licensed under s. 489.111 or a roofing contractor;

4. A professional engineer licensed under s. 471.015;

5. A professional architect licensed under s. 481.213; or

6. Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a general inspection of a residential structure insured with a homeowner's insurance policy.

Section 9. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 10. Section 628.061, Florida Statutes, is amended

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to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize or incorporate a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Section 11. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration; regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers,



except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company System Regulatory Act ~~and the Insurance Holding Company System Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange

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Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, a circumstance, an event, or a series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The commission may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a registration statement, or a summary of the registration statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 12. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined~~.~~—~~As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

(b) The parents of the other person, and their lineal

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descendants, and the parents of the other person's spouse, and their lineal descendants.

(c) A person who directly or indirectly owns or controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the other person.

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A director, an officer, a trustee, a partner, an owner, a manager, a joint venturer, an employee, or other person performing duties similar to those of persons in such positions.

(g) If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.

(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.

(i) A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" or "attorney" means the attorney in

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fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means a person, a corporation, a trust, a limited liability company, an association, or another entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" means ~~is~~ that resulting from an interexchange among persons, known as ~~"~~subscribers,~~"~~ of reciprocal agreements of indemnity, the interexchange being effectuated through an ~~"~~attorney in fact~~"~~ common to all such persons.

(5) "Reciprocal insurer" means unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

Section 13. Section 629.021, Florida Statutes, is repealed.

Section 14. Section 629.061, Florida Statutes, is repealed.

Section 15. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer by making application to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~and make application to the office for a certificate of authority to transact insurance~~.

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(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 or other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which shall be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which shall be the same as that of the proposed attorney in fact and shall be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation, as well as the background information as specified in s. 629.227 for all officers, directors, and equivalent positions of the proposed attorney in fact as well as for any person with ownership interests of 10 percent or more in the proposed attorney in fact.~~;~~

(g) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.



(h) ~~(g)~~ The proposed charter powers of the subscribers' advisory committee, and the names and terms of office of the members thereof as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(i) A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

~~(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

(j) ~~(l)~~ A copy of each policy, endorsement, and application form the insurer ~~it then~~ proposes to issue or use.

(3) The filing must be accompanied by the application fee required under s. 624.501(1)(a) and such other pertinent information and documents as reasonably requested by the office.

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

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Section 16. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit.

(2) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an application for a certificate of authority in accordance with forms prescribed by the commission that, in addition to applicable requirements of ss. 624.404, 624.411, and 624.413 and other relevant statutes, consist of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers' agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

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(f) Such other pertinent information or documents as reasonably requested by the office.

(3) If the reciprocal insurer intends to issue nonassessable policies upon the receipt of a certificate of authority, and the office determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, the office must grant authorization to issue nonassessable policies.

(4) The certificate of authority ~~of a reciprocal insurer~~ shall be issued ~~to its attorney~~ in the name of the reciprocal insurer to its attorney in fact.

Section 17. Section 629.094, Florida Statutes, is created to read:

629.094 Continued eligibility for certificate of authority.—In order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer shall continue to meet all applicable conditions required for receiving the initial permit and certificate of authority under this code and the rules adopted thereunder.

Section 18. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney.—

(1) The rights and powers of the attorney in fact of a reciprocal insurer are ~~shall be~~ as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney in fact.~~;~~

(b) That the attorney in fact is empowered to accept



service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~;~~

(c) The place where the office of the attorney in fact is maintained.

(d) The general services to be performed by the attorney in fact.~~;~~

(e) That the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

(f)~~(d)~~ The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney in fact and the general items of expense in addition to losses, to be paid by the insurer.~~; and~~

(g)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount may ~~shall be~~ not be less than 5 or ~~nor~~ more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may do all of the following:

(a) Provide for the right of substitution of the attorney in fact and revocation of the power of attorney and rights thereunder.~~;~~

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers.~~;~~

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee.~~; and~~

(4)~~(d)~~ The power of attorney must contain other lawful provisions deemed advisable.

(5)~~(4)~~ The terms of any power of attorney or agreement collateral thereto must ~~shall~~ be reasonable and equitable, and

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no such power or agreement may ~~shall~~ be used or be effective in this state unless filed with the office.

Section 19. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—The provisions of this section apply to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers.

(1) A person may not, individually or in conjunction with any affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire, 10 percent or more of the outstanding voting securities of an attorney in fact which is a stock corporation or of a controlling company of an attorney in fact which is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact which is not a stock corporation or of a controlling company of an attorney which is not a stock corporation, unless all of the following conditions are met:

(a) The person or affiliated person has filed with the office and sent to the principal office of the attorney in fact, and any controlling company of the attorney in fact, the subscribers' advisory committee, and the domestic reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. The notification must be provided on forms prescribed by the



commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

(b) The subscribers' advisory committee has provided the notification required under paragraph (a) on a form prescribed by the commission, explaining what the notification is and letting the subscribers know of the filing deadlines for objecting to the acquisition.

(c) The person or affiliated person has filed with the office an application signed under oath and prepared on forms prescribed by the commission which contains the information specified in subsection (4). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved.

(d) The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved.

(2) This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

(3) The person or affiliated person filing the notice required by paragraph (1)(a) may request that the office waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders, and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or

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indirect interest in the attorney in fact. The office may waive the filing required by paragraph (1)(b) if it determines that there is no change in the ultimate controlling shareholders, and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(4) The application to be filed with the office and furnished to the attorney in fact must contain the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or other person performing duties similar to those of persons in such positions, for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals which such persons may have made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management.



(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(g) The filing must be accompanied by the fee required under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section or the background information required under s. 629.227, an amendment specifying such changes must be filed immediately with the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in

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accordance with chapter 120. The office may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office within 10 days after the date notice of the filing is given, or 10 days after notice of the filing is sent to the subscribers by the subscribers advisory committee, whichever is later. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining office approval. However, at any time it finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to the provisions of this section, the acquiring person may not make any material change in the operation of the attorney in fact or controlling company unless the office has specifically approved the change, nor shall the acquiring person make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. The term "material change in the operation of the attorney in fact" means a

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transaction that disposes of or obligates 5 percent or more of the capital and surplus of the attorney in fact or of any domestic reciprocal insurer. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office shall approve a material change in operations if it finds the applicable provisions of subsection (8) have been met. The office may disapprove a material change in management if it finds that the applicable provisions of subsection (8) have not been met and in such case the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order shall be issued within 20 days after the date of the recommended order or, if exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office issued pursuant to subsection (11), fails to divest himself or herself of any stock or ownership interest obtained in violation of this

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765 section or fails to divest himself or herself of any direct or
766 indirect control of such stock or ownership interest, within 25
767 days after such order; or
768 (c) In violation of an order issued by the office pursuant
769 to subsection (12), acquires an additional stock or ownership
770 interest in an attorney in fact or controlling company or direct
771 or indirect control of such stock or ownership interest, without
772 complying with this section.
773 (8) The person or persons filing the application required
774 by this section have the burden of proof. The office shall
775 approve any such acquisition if it finds, on the basis of the
776 record made during any proceeding or on the basis of the filed
777 application if no proceeding is conducted, that:
778 (a) The financial condition of the acquiring person or
779 persons will not jeopardize the financial stability of the
780 attorney in fact or prejudice the interests of the reciprocal
781 insurer's subscribers or the public.
782 (b) Any plan or proposal which the acquiring person has, or
783 acquiring persons have, made:
784 1. To liquidate the attorney in fact, sell its assets, or
785 merge or consolidate it with any person, or to make any other
786 major change in its business or corporate structure or
787 management is fair and free of prejudice to the reciprocal
788 insurer's subscribers or to the public; or
789 2. To liquidate any controlling company, sell its assets,
790 or merge or consolidate it with any person, or to make any major
791 change in its business or corporate structure or management
792 which would have an effect upon the attorney in fact, is fair
793 and free of prejudice to the reciprocal insurer's subscribers or



to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, joint venturers, or other persons performing duties similar to those of persons in such positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent, trustworthy, and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition may not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated



the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, the controlling company, or the reciprocal insurer, the circuit court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There shall be a private right of action in favor of the attorney in fact, or controlling company, to enforce this section. A demand upon the office that it performs its functions may not be required as a prerequisite to any suit by the attorney in fact or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by the attorney in fact or controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, shall be deemed to have thereby designated the Chief Financial Officer, or his or her assistant or deputy or



another person in charge of his or her office, as such person's agent for service of process under this section and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval by the office under this section does not constitute a recommendation by the office of the tender offer or exchange offer, or acquisition, if no tender offer or exchange offer is involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report under this section which may arise out of the attorney in fact's relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person or any

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affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company which is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company which is not a stock corporation, without complying with this section, the office may order that the person and any affiliated person of such person cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office must, if necessary to protect the public interest, suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If any reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), any other reciprocal insurer using the same attorney in fact is also subject to suspension or revocation. In such case, the office may offer any affected reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or revocation by procuring another attorney in fact acceptable to the office or taking any other action agreed to by the office.

Section 20. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to:

(1) A sworn biographical statement, on forms adopted by the

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commission, which must include, but need not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 20 years, including the principal business and address of any business, corporation, or organization where each occupation, position of employment, or office occurred.

(b) Whether the person was, at any time during a 10-year period, convicted of any crime other than a traffic violation.

(c) Whether the person has been, during a 10-year period, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during a 10-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act.

(e) Whether, during a 10-year period, any person or other business or organization in which the person was a director, officer, trustee, partner, owner, manager, or other official has been subject of any proceeding under the federal Bankruptcy Act, either during the time of that person's tenure with the business or organization or within 12 months thereafter.

(f) Whether, during a 10-year period, the person has been enjoined, temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(g) Whether, during a 20-year period, the person served as the attorney in fact, a subscribers' advisory committee member,

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or any other manager or officer of a reciprocal insurer or an insurer that became insolvent or had its certificate of authority suspended or revoked.

(2) A full set of fingerprints, which must be provided to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing as described in s. 624.34. Fees for state and federal fingerprint processing must be borne by the individual. The state cost for fingerprint processing is as provided in s. 943.053(3)(e).

(3) Authority for release of information in regard to the investigation of such person's background.

(4) Any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public.

Section 21. Section 629.229, Florida Statutes, is created to read:

629.229 Attorney in fact, officers, and directors of insolvent reciprocal insurers or other insurers.—Any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within

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the 2-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not thereafter:

(1) Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or

(2) Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law,

unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 22. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—Upon impairment of the surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization issued under s. 629.291(5) or s. 629.091(3). Upon revocation of the authority to issue nonassessable policies, the reciprocal insurer may not issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301 applies to such insurer.



~~(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.~~

~~(2) Upon impairment of such surplus, the office shall forthwith revoke the certificate.~~ Such revocation does ~~shall~~ not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

~~(3) The office shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.~~



Section 23. Section 629.291, Florida Statutes, is amended to read:

629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, and subject to ~~the~~ approval by ~~of~~ the office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the insurance code. However, a domestic stock insurer may not convert to a reciprocal insurer.

(2) A plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer must be filed on forms adopted by the office and contain such information as the office reasonably requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(3) The office may ~~shall~~ not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with s. 629.281, and a reasonable length of time within which to exercise such right.

(4) Reinsurance of all or substantially all of the insurance in force of a ~~domestic~~ reciprocal insurer in another insurer shall be deemed to be a merger for the purposes of this

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section.

(5)(a) An assessable reciprocal insurer may convert to a nonassessable reciprocal insurer if:

1. The subscribers' advisory committee approves the conversion;

2. The attorney in fact submits the application for conversion on the required application form; and

3. The office finds that the application for conversion meets the minimum statutory requirements.

(b) If the office approves the application for conversion, the assessable reciprocal insurer may convert to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

Section 24. Section 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt, amend, or repeal rules necessary to implement this chapter.

Section 25. Paragraph (h) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

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(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 26. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in s. 624.4622, a self-insured public utility as defined in s. 624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 27. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.



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========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 6 - 156
and insert:
beginning on a specified date, requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; requiring that such report include certain information for each zip code; amending s. 624.4305, F.S.; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; amending s. 624.46226, F.S.; revising the requirements for public housing authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances; providing exceptions; providing construction; authorizing the commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s. 627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending s. 627.7011, F.S.; revising the definition of the term "authorized inspector"; amending s. 628.011, F.S.; conforming provisions to changes made by the act; amending s. 628.061, F.S.; conforming a provision to changes made by the act; revising the persons that the office is required to investigate in connection with a

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proposal to organize or incorporate a domestic insurer; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the commission to adopt rules; amending s. 629.011, F.S.; defining terms; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.061, F.S., relating to the term "attorney"; amending s. 629.081, F.S.; revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be accompanied by a specified fee and other pertinent information and documents; requiring the office to evaluate and grant or deny the permit application in accordance with specified provisions; amending s. 629.091, F.S.; providing that a domestic reciprocal insurer may seek a certificate of authority only under certain circumstances; providing requirements for an application for a certificate of authority to operate as a domestic reciprocal insurer; requiring the office to grant authorization to issue nonassessable policies under certain circumstances; requiring that a certificate of authority be issued in the name of the reciprocal insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending

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s. 629.101, F.S.; revising requirements for the power of attorney given by subscribers of a domestic reciprocal insurer to its attorney in fact; requiring that such power of attorney contain certain provisions; creating s. 629.225, F.S.; providing applicability; prohibiting persons from concluding a tender offer or exchange offer or acquiring securities of certain attorneys in fact and controlling companies of certain attorneys in fact; providing an exception; providing applicability; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a request for a proceeding is filed, to conduct a proceeding within a specified timeframe to consider the appropriateness of such application; requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed

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acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain changes during the pendency of the office's review of an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain acquisitions are void; specifying that certain provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not

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constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations; authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; creating s. 629.227, F.S.; specifying the information as to the background and identity of certain persons which must be furnished by such persons; creating s. 629.229, F.S.; prohibiting certain persons who served in certain capacities before a specified date from serving in certain other roles or having certain control over certain selections; providing an exception; amending s. 629.261, F.S.; requiring the office to revoke certain authorization under certain circumstances; prohibiting insurers subject to such action from issuing or renewing nonassessable policies or converting assessable policies to nonassessable policies; providing that specified provisions apply to such insurers; deleting provisions regarding the office's authority to issue a certificate authoring the insurer



to extinguish the contingent liability of subscribers; deleting a prohibition regarding the office's authorization to extinguish the contingent liability of certain subscribers; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the insurance code; prohibiting domestic stock insurers from being converted to reciprocal insurers; requiring that specified plans be filed with the office and that such plans contain certain information; deleting a provision regarding a stock or mutual insurer's capital and surplus requirements and rights; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; creating s. 629.525, F.S.; requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01 and 626.9531, F.S.; conforming cross-references; providing effective dates.

By the Committee on Banking and Insurance; and Senator Trumbull

597-02596-24 20241622c1

A bill to be entitled

An act relating to insurance; amending s. 624.3161, F.S.; revising the entities for which the Office of Insurance Regulation is required to conduct market conduct examinations; amending s. 624.424, F.S.; requiring insurers and insurer groups to file a specified supplemental report on a monthly basis; requiring that such report include certain information for each zip code; amending s. 624.4305, F.S.; authorizing the Financial Services Commission to adopt rules related to notice of nonrenewal of residential property insurance policies; amending s. 624.46226, F.S.; revising the requirements for public housing authority self-insurance funds; amending s. 626.9201, F.S.; prohibiting insurers from canceling or nonrenewing certain insurance policies under certain circumstances; providing exceptions; providing construction; authorizing the commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; amending s. 627.062, F.S.; specifying requirements for rate filings if certain models are used; amending s. 627.351, F.S.; revising requirements for certain policies that are not subject to certain rate increase limitations; amending s. 628.011, F.S.; conforming provisions to changes made by the act; amending s. 628.061, F.S.; conforming a provision to changes made by the act; revising the persons that the office is required to investigate in connection with a proposal to organize or incorporate a domestic

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597-02596-24 20241622c1

insurer; amending s. 628.801, F.S.; revising requirements for rules adopted for insurers that are members of an insurance holding company; deleting an obsolete date; authorizing the commission to adopt rules; amending s. 629.011, F.S.; defining terms; repealing s. 629.021, F.S., relating to the definition of the term "reciprocal insurer"; repealing s. 629.061, F.S., relating to the term "attorney"; amending s. 629.081, F.S.; revising the procedure for persons to organize as a domestic reciprocal insurer; specifying requirements for the permit application; requiring that the application be accompanied by a specified fee and other pertinent information and documents; requiring the office to evaluate and grant or deny the permit application in accordance with specified provisions; amending s. 629.091, F.S.; providing that a domestic reciprocal insurer may seek a certificate of authority only under certain circumstances; providing requirements for an application for a certificate of authority to operate as a domestic reciprocal insurer; requiring the office to grant a certificate of authority under certain circumstances; requiring that such certificate of authority be issued in the name of the reciprocal insurer to its attorney in fact; creating s. 629.094, F.S.; requiring a domestic reciprocal insurer to meet certain requirements to maintain its eligibility for a certificate of authority; amending s. 629.101, F.S.; revising requirements for the power of attorney given

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by subscribers of a domestic reciprocal insurer to the attorney in fact; creating s. 629.225, F.S.; providing applicability; prohibiting persons from concluding a tender offer or exchange offer or acquiring securities of certain attorneys in fact and controlling companies of certain attorneys in fact; providing an exception; providing applicability; authorizing certain persons to request that the office waive certain requirements; providing that the office may waive certain requirements if specified determinations are made; specifying the requirements of an application to the office relating to certain acquisitions; requiring that such application be accompanied by a specified fee; requiring that amendments be filed with the office under certain circumstances; specifying the manner in which the acquisition application must be reviewed; authorizing the office, and requiring the office if a request for a proceeding is filed, to conduct a proceeding within a specified timeframe to consider the appropriateness of such application; requiring that certain time periods be tolled; requiring that written requests for a proceeding be filed within a certain timeframe; authorizing certain persons to take all steps to conclude the acquisition during the pendency of the proceeding or review period; requiring the office to order a proposed acquisition disapproved and that actions to conclude the acquisition be ceased under certain circumstances; prohibiting certain persons from making certain

changes during the pendency of the office's review of an acquisition; providing an exception; defining the terms "material change in the operation of the attorney in fact" and "material change in the management of the attorney in fact"; requiring the office to approve or disapprove certain changes upon making certain findings; requiring that a proceeding be conducted within a certain timeframe; requiring that recommended orders and final orders be issued within a certain timeframe; specifying the circumstances under which the office may disapprove an acquisition; specifying that certain persons have the burden of proof; requiring the office to approve an acquisition upon certain findings; specifying that certain votes are not valid and that certain acquisitions are void; specifying that certain provisions may be enforced by an injunction; creating a private right of action in favor of the attorney in fact or the controlling company to enforce certain provisions; providing that a certain demand upon the office is not required before certain legal actions; providing that the office is not a necessary party to certain actions; specifying the persons who are deemed designated for service of process and who have submitted to the administrative jurisdiction of the office; providing that approval by the office does not constitute a certain recommendation; providing that certain actions are unlawful; providing criminal penalties; providing a statute of limitations;

authorizing a person to rebut a presumption of control by filing certain disclaimers; specifying the contents of such disclaimer; specifying that, after a disclaimer is filed, the attorney in fact is relieved of a certain duty; authorizing the office to order certain persons to cease acquisition of the attorney in fact or controlling company and divest themselves of any stock or ownership interest under certain circumstances; requiring the office to suspend or revoke the reciprocal certificate of authority under certain circumstances; creating s. 629.227, F.S.; specifying the information as to the background and identity of certain persons which must be furnished by such persons; creating s. 629.229, F.S.; prohibiting certain persons who served in certain capacities before a specified date from serving in certain other roles or having certain control over certain selections; providing an exception; amending s. 629.261, F.S.; requiring the office to revoke certain authorization under certain circumstances; deleting provisions regarding the office's authority to issue a certificate authoring the insurer to extinguish the contingent liability of subscribers; deleting a prohibition regarding the office's authorization to extinguish the contingent liability of certain subscribers; amending s. 629.291, F.S.; providing that certain insurers that merge are governed by the insurance code; prohibiting domestic stock insurers from being converted to reciprocal insurers; requiring

that specified plans be filed with the office and that such plans contain certain information; deleting a provision regarding a stock or mutual insurer's capital and surplus requirements and rights; authorizing the conversion of assessable reciprocal insurers to nonassessable reciprocal insurers under certain circumstances; creating s. 629.525, F.S.; requiring the commission to adopt, amend, or repeal certain rules; amending ss. 163.01 and 626.9531, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (1) of section 624.3161, Florida Statutes, is amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, the attorney in fact of each reciprocal insurer, and each authorized insurer transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

Section 2. Paragraph (a) of subsection (10) of section

624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(10)(a) Each insurer or insurer group doing business in this state shall file on a monthly ~~quarterly~~ basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each zip code ~~county on a monthly basis~~:

1. Total number of policies in force at the end of each month.

2. Total number of policies canceled.

3. Total number of policies nonrenewed.

4. Number of policies canceled due to hurricane risk.

5. Number of policies nonrenewed due to hurricane risk.

6. Number of new policies written.

7. Total dollar value of structure exposure under policies that include wind coverage.

8. Number of policies that exclude wind coverage.

9. Number of claims open each month.

10. Number of claims closed each month.

11. Number of claims pending each month.

12. Number of claims in which either the insurer or insured

invoked any form of alternative dispute resolution, and specifying which form of alternative dispute resolution was used.

Section 3. Section 624.4305, Florida Statutes, is amended to read:

624.4305 Nonrenewal of residential property insurance policies.—Any insurer planning to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period shall give notice in writing to the Office of Insurance Regulation for informational purposes 90 days before the issuance of any notices of nonrenewal. The notice provided to the office must set forth the insurer's reasons for such action, the effective dates of nonrenewal, and any arrangements made for other insurers to offer coverage to affected policyholders. The commission may adopt rules to administer this section.

Section 4. Paragraph (d) of subsection (1) of section 624.46226, Florida Statutes, is amended to read:

624.46226 Public housing authorities self-insurance funds; exemption for taxation and assessments.—

(1) Notwithstanding any other provision of law, any two or more public housing authorities in the state as defined in chapter 421 may form a self-insurance fund for the purpose of pooling and spreading liabilities of its members as to any one or combination of casualty risk or real or personal property risk of every kind and every interest in such property against loss or damage from any hazard or cause and against any loss consequential to such loss or damage, provided the self-insurance fund that is created:

(d) Maintains a continuing program of excess insurance coverage and reinsurance ~~reserve evaluation~~ to protect the financial stability of the fund ~~in an amount and manner determined by a qualified and independent actuary~~. The program must, at a minimum~~, this program must~~:

1. Include a net retention in an amount and manner selected by the administrator, ratified by the governing body, and certified by an independent qualified actuary;

2. Include reinsurance or ~~Purchase~~ excess insurance from authorized insurance carriers or eligible surplus lines insurers; and~~.~~

3. Be certified by a qualified and independent actuary as to the program's adequacy. This certification must be submitted simultaneously with the certifications required under paragraphs (b) and (c).

~~2. Retain a per-loss occurrence that does not exceed $350,000.~~

A for-profit or not-for-profit corporation, limited liability company, or other similar business entity in which a public housing authority holds an ownership interest or participates in its governance under s. 421.08(8) may join a self-insurance fund formed under this section in which such public housing authority participates. Such for-profit or not-for-profit corporation, limited liability company, or other similar business entity may join the self-insurance fund solely to insure risks related to public housing.

Section 5. Subsection (2) of section 626.9201, Florida Statutes, is amended to read:

626.9201 Notice of cancellation or nonrenewal.—

(2) An insurer issuing a policy providing coverage for property, casualty, surety, or marine insurance must give the named insured written notice of cancellation or termination other than nonrenewal at least 45 days before the effective date of the cancellation or termination, including in the written notice the reasons for the cancellation or termination, except that:

(a) If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason for cancellation must be given. As used in this paragraph, the term "nonpayment of premium" means the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy or an installment of such a premium, whether the premium or installment is payable directly to the insurer or its agent or indirectly under any plan for financing premiums or extension of credit or the failure of the named insured to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also includes the failure of a financial institution to honor the check of an applicant for insurance which was delivered to a licensed agent for payment of a premium, even if the agent previously delivered or transferred the premium to the insurer. If a correctly dishonored check represents payment of the initial premium, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by

certified mail or registered mail, and, if the contract is void, any premium received by the insurer from a third party must ~~shall~~ be refunded to that party in full; ~~and~~

(b) If cancellation or termination occurs during the first 90 days during which the insurance is in force and if the insurance is canceled or terminated for reasons other than nonpayment, at least 20 days' written notice of cancellation or termination accompanied by the reason for cancellation or termination must be given, except if there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer; and

(c)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for 90 days after the dwelling or residential property has been repaired. A dwelling or residential property is deemed to be repaired when substantially completed and restored to the extent that the dwelling or residential property is insurable by another insurer that is writing policies in this state.

2. However, an insurer or agent may cancel or nonrenew such a policy before the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the

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claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling or residential property;

(III) If the insurer or its agent makes a reasonable written inquiry to the insured as to the status of repairs, and the insured fails within 30 calendar days to provide information that is responsive to the inquiry to either the address or e-mail account designated by the insurer; or

(IV) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.

4. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repair is completed for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations of subparagraph 1.

5. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

Section 6. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing~~:~~

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~~1.~~ must account for mitigation measures undertaken by policyholders to reduce hurricane losses and windstorm losses.

~~2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628.~~

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 7. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative

challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to

reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. ~~The following~~ New or renewal personal lines policies that do not cover a primary residence ~~written on or after November 1, 2023,~~ are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, nor less than, the prior year's established rate for the corporation~~:~~

~~a. Policies that do not cover a primary residence;~~

~~b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or~~

~~c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631~~.

9. As used in this paragraph, the term "primary residence"

means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

Section 8. Section 628.011, Florida Statutes, is amended to read:

628.011 Scope of part.—This part applies only to domestic ~~stock~~ insurers, mutual insurers, and captive insurers, except that s. 628.341(2) applies also as to foreign and alien insurers.

Section 9. Section 628.061, Florida Statutes, is amended to read:

628.061 Investigation of proposed organization.—In connection with any proposal to organize or incorporate a domestic insurer, the office shall make an investigation of:

(1) The character, reputation, financial standing, and motives of the organizers, incorporators, and subscribers organizing the proposed insurer or any attorney in fact.

(2) The character, financial responsibility, insurance experience, and business qualifications of its proposed officers, members of its subscribers' advisory committee, or officers of its attorney in fact.

(3) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, including the stockholders and directors of any attorney in fact.

Section 10. Subsections (1), (2), and (5) of section 628.801, Florida Statutes, are amended to read:

628.801 Insurance holding companies; registration;

regulation.—

(1) An insurer that is authorized to do business in this state and that is a member of an insurance holding company shall, on or before April 1 of each year, register with the office and file a registration statement and be subject to regulation with respect to its relationship to the holding company as provided by law or rule. The commission shall adopt rules establishing the information and statement form required for registration and the manner in which registered insurers and their affiliates are regulated. The rules apply to domestic insurers, foreign insurers, and commercially domiciled insurers, except for foreign insurers domiciled in states that are currently accredited by the NAIC. Except to the extent of any conflict with this code, the rules must include all requirements and standards of the Insurance Holding Company System Model Regulation and ss. 4 and 5 of the Insurance Holding Company System Regulatory Act ~~and the Insurance Holding Company System Model Regulation~~ of the NAIC, as adopted in December 2020 ~~2010~~. The commission may adopt subsequent amendments thereto if the methodology remains substantially consistent. The rules may include a prohibition on oral contracts between affiliated entities. Material transactions between an insurer and its affiliates must ~~shall~~ be filed with the office as provided by rule.

(2) ~~Effective January 1, 2015,~~ The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report on or before April 1. As used in this subsection, the term "ultimate controlling person" means a person who is not controlled by any other person. The report

must, to the best of the ultimate controlling person's knowledge and belief, ~~must~~ identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must ~~shall~~ be filed with the lead state office of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC and is confidential and exempt from public disclosure as provided in s. 624.4212.

(a) An insurer may satisfy this requirement by providing the office with the most recently filed parent corporation reports that have been filed with the Securities and Exchange Commission which provide the appropriate enterprise risk information.

(b) The term "enterprise risk" means an activity, a circumstance, an event, or a series of events involving one or more affiliates of an insurer which, if not remedied promptly, are likely to have a materially adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. 624.4085 or would cause the insurer to be in a hazardous financial condition.

(c) The commission may adopt rules for filing the annual enterprise risk report in accordance with the Insurance Holding Company System Regulatory Act and the Insurance Holding Company System Model Regulation of the NAIC, as adopted in December 2020.

(5) ~~Effective January 1, 2015,~~ The failure to file a registration statement, or a summary of the registration

statement, or the enterprise risk filing report required by this section within the time specified for filing is a violation of this section.

Section 11. Section 629.011, Florida Statutes, is amended to read:

629.011 Definitions ~~"Reciprocal insurance" defined.~~ As used in this part, the term:

(1) "Affiliated person" of another person means any of the following:

(a) The spouse of the other person.

(b) The parents of the other person, and their lineal descendants, and the parents of the other person's spouse, and their lineal descendants.

(c) A person who directly or indirectly owns or controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the other person.

(d) A person who directly or indirectly owns 10 percent or more of the outstanding voting securities that are directly or indirectly owned or controlled, or held with power to vote, by the other person.

(e) A person or group of persons who directly or indirectly control, are controlled by, or are under common control with the other person.

(f) A director, an officer, a trustee, a partner, an owner, a manager, a joint venturer, an employee, or other person performing duties similar to those of persons in such positions.

(g) If the other person is an investment company, any investment adviser of such company or any member of an advisory board of such company.

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(h) If the other person is an unincorporated investment company not having a board of directors, the depositor of such company.

(i) A person who has entered into an agreement, written or unwritten, to act in concert with the other person in acquiring, or limiting the disposition of:

1. Securities of an attorney in fact or controlling company that is a stock corporation; or

2. An ownership interest of an attorney in fact or controlling company that is not a stock corporation.

(2) "Attorney in fact" or "attorney" means the attorney in fact of a reciprocal insurer. The attorney in fact may be an individual, a corporation, or another person.

(3) "Controlling company" means a person, a corporation, a trust, a limited liability company, an association, or another entity owning, directly or indirectly, 10 percent or more of the voting securities of one or more attorneys in fact that are stock corporations, or 10 percent or more of the ownership interest of one or more attorneys in fact that are not stock corporations.

(4) "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

(5) "Reciprocal insurer" means unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves.

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Section 12. Section 629.021, Florida Statutes, is repealed.

Section 13. Section 629.061, Florida Statutes, is repealed.

Section 14. Section 629.081, Florida Statutes, is amended to read:

629.081 Organization of reciprocal insurer.—

(1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer by making application to the office for a permit to do so. A domestic reciprocal insurer may not be formed unless the persons so proposing have first received a permit from the office ~~and make application to the office for a certificate of authority to transact insurance~~.

(2) The permit application, to be filed by the organizers or the proposed attorney in fact, must be in writing and made in accordance with forms prescribed by the commission. In addition to any applicable requirements of s. 628.051 or other relevant statutes, the application must include all of the following ~~shall fulfill the requirements of and shall execute and file with the office, when applying for a certificate of authority, a declaration setting forth~~:

(a) The name of the proposed reciprocal insurer, which shall be in accordance with s. 629.051.~~;~~

(b) The location of the insurer's principal office, which shall be the same as that of the proposed attorney in fact and shall be maintained within this state.~~;~~

(c) The kinds of insurance proposed to be transacted.~~;~~

(d) The names and addresses of the original 25 or more subscribers.~~;~~

(e) The proposed designation and appointment of the proposed attorney in fact and a copy of the proposed power of

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attorney.~~;~~

(f) The names and addresses of the officers and directors of the proposed attorney in fact, if a corporation, or of its members, if other than a corporation, as well as the background information as specified in s. 629.227 for all officers, directors, and equivalent positions of the proposed attorney in fact as well as for any person with ownership interests of 10 percent or more in the proposed attorney in fact.~~;~~

(g) The articles of incorporation and bylaws, or equivalent documents, of the proposed attorney in fact, dated within the last year and appropriately certified.

(h) ~~(g)~~ The proposed charter powers of the subscribers' advisory committee, and the names and terms of office of the members thereof as well as the background information as specified in s. 629.227 for each proposed member.~~;~~

~~(h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;~~

(i) A copy of the proposed subscribers' agreement.~~;~~

~~(j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office;~~

~~(k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand; and~~

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(j) ~~(l)~~ A copy of each policy, endorsement, and application form the insurer ~~it then~~ proposes to issue or use.

(3) The filing must be accompanied by the application fee required under s. 624.501(1)(a)and such other pertinent information and documents as reasonably requested by the office.

(4) The office shall evaluate and grant or deny the permit application in accordance with ss. 628.061, 628.071, and other relevant provisions of the code.

~~Such declaration shall be acknowledged by the attorney before an officer authorized to take acknowledgments.~~

Section 15. Section 629.091, Florida Statutes, is amended to read:

629.091 Reciprocal certificate of authority.—

(1) A domestic reciprocal insurer may seek a certificate of authority only after obtaining a permit.

(2) To apply for a certificate of authority as a domestic reciprocal insurer, the attorney in fact of an applicant who has previously received a permit from the office may file an application for a certificate of authority in accordance with forms prescribed by the commission that, in addition to applicable requirements of ss. 624.404, 624.411, and 624.413 and other relevant statutes, consist of all of the following:

(a) Executed copies of any proposed or draft documents required as part of the permit application.

(b) A statement affirming that all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney in fact, be held in the name of the insurer and for the purposes specified in the subscribers'

agreement.

(c) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the office.

(d) A copy of the bond required under s. 629.121.

(e) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by s. 629.071 is on hand.

(f) Such other pertinent information or documents as reasonably requested by the office.

(3) If the reciprocal insurer intends to issue nonassessable policies upon the receipt of a certificate of authority, and the office determines that the reciprocal insurer meets the legal requirements to issue nonassessable policies, including the surplus requirements, the office shall grant authorization for a certificate of authority. If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue or renew nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301 shall apply.

(4) The certificate of authority ~~of a reciprocal insurer~~ shall be issued ~~to its attorney~~ in the name of the reciprocal insurer to its attorney in fact.

Section 16. Section 629.094, Florida Statutes, is created to read:

629.094 Continued eligibility for certificate of

authority.—In order to maintain its eligibility for a certificate of authority, a domestic reciprocal insurer shall continue to meet all applicable conditions required for receiving the initial permit and certificate of authority under this code and the rules adopted thereunder.

Section 17. Section 629.101, Florida Statutes, is amended to read:

629.101 Power of attorney in fact.—

(1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth all of the following:

(a) The powers of the attorney.~~;~~

(b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged.~~;~~

(c) The general services to be performed by the attorney.~~;~~

(d) That the attorney in fact has a fiduciary duty to the subscribers of the reciprocal insurer.

(e)~~(d)~~ The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer.~~; and~~

(f)~~(e)~~ Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount, which amount shall be not less than 5 nor more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state unless filed with the office.

Section 18. Section 629.225, Florida Statutes, is created to read:

629.225 Acquisitions.—The provisions of this section apply to domestic reciprocal insurers and the attorney in fact of domestic reciprocal insurers.

(1) A person may not, individually or in conjunction with any affiliated person of such person, directly or indirectly, conclude a tender offer or exchange offer for, enter into any agreement to exchange securities for, or otherwise finally acquire, 10 percent or more of the outstanding voting securities of an attorney in fact which is a stock corporation or of a controlling company of an attorney in fact which is a stock corporation; or conclude an acquisition of, or otherwise finally acquire, 10 percent or more of the ownership interest of an attorney in fact which is not a stock corporation or of a controlling company of an attorney which is not a stock corporation, unless all of the following conditions are met:

(a) The person or affiliated person has filed with the

office and sent to the principal office of the attorney in fact, and any controlling company of the attorney in fact, the subscribers' advisory committee, and the domestic reciprocal insurer a letter of notification regarding the transaction or proposed transaction no later than 5 days after any form of tender offer or exchange offer is proposed, or no later than 5 days after the acquisition of the securities or ownership interest if a tender offer or exchange offer is not involved. The notification must be provided on forms prescribed by the commission containing information determined necessary to understand the transaction and identify all purchasers and owners involved.

(b) The subscribers' advisory committee has provided the notification required under paragraph (a) on a form prescribed by the commission, explaining what the notification is and letting the subscribers know of the filing deadlines for objecting to the acquisition.

(c) The person or affiliated person has filed with the office an application signed under oath and prepared on forms prescribed by the commission which contains the information specified in subsection (4). The application must be completed and filed within 30 days after any form of tender offer or exchange offer is proposed, or after the acquisition of the securities if a tender offer or exchange offer is not involved.

(d) The office has approved the tender offer or exchange offer, or acquisition if a tender offer or exchange offer is not involved.

(2) This section does not apply to any acquisition of voting securities or ownership interest of an attorney in fact

or of a controlling company by any person who is the owner of a majority of the voting securities or ownership interest with the approval of the office under this section or s. 629.091.

(3) The person or affiliated person filing the notice required by paragraph (1)(a) may request that the office waive the requirements of paragraph (1)(b), provided that there is no change in the ultimate controlling shareholders, and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties acquire any direct or indirect interest in the attorney in fact. The office may waive the filing required by paragraph (1)(b) if it determines that there is no change in the ultimate controlling shareholders, and no change in the ownership percentages of the ultimate controlling shareholders, and no unaffiliated parties will acquire any direct or indirect interest in the attorney in fact.

(4) The application to be filed with the office and furnished to the attorney in fact must contain the following information and any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public:

(a) The identity and background information specified in s. 629.227 of:

1. Each person by whom, or on whose behalf, the acquisition is to be made; and

2. Any person who controls, directly or indirectly, such other person, including each director, officer, trustee, partner, owner, manager, or joint venturer, or other person

performing duties similar to those of persons in such positions, for the person.

(b) The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

(c) Any plans or proposals which such persons may have made to liquidate the attorney in fact or controlling company, to sell any of their assets or merge or consolidate them with any person, or to make any other major change in their business or corporate structure or management.

(d) The nature and the extent of the controlling interest which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the controlling interest is to be acquired of an attorney in fact or controlling company which is not a stock corporation.

(e) The number of shares or other securities which the person or affiliated person of such person proposes to acquire, the terms of the proposed acquisition, and the manner in which the securities are to be acquired.

(f) Information as to any contract, arrangement, or understanding with any party with respect to any of the securities of the attorney in fact or controlling company, including, but not limited to, information relating to the transfer of any of the securities, option arrangements, puts or calls, or the giving or withholding of proxies, which information names the party with whom the contract, arrangement, or understanding has been entered into and gives the details thereof.

(g) The filing must be accompanied by the fee required

under s. 624.501(1)(a).

(5) If any material change occurs in the facts provided in the application filed with the office pursuant to this section or the background information required under s. 629.227, an amendment specifying such changes must be filed immediately with the office, and a copy of the amendment must be sent to the principal office of the attorney in fact and to the principal office of the controlling company.

(6)(a) The acquisition application must be reviewed in accordance with chapter 120. The office may on its own initiate, or, if requested to do so in writing by a substantially affected person, shall conduct a proceeding to consider the appropriateness of the proposed filing. Time periods for purposes of chapter 120 shall be tolled during the pendency of the proceeding. Any written request for a proceeding must be filed with the office within 10 days after the date notice of the filing is given, or 10 days after notice of the filing is sent to the subscribers by the subscribers advisory committee, whichever is later. During the pendency of the proceeding or review period by the office, any person or affiliated person complying with the filing requirements of this section may proceed and take all steps necessary to conclude the acquisition so long as the acquisition becoming final is conditioned upon obtaining office approval. However, at any time it finds an immediate danger to the public health, safety, and welfare of the reciprocal insurer's subscribers exists, the office shall immediately order, pursuant to s. 120.569(2)(n), the proposed acquisition disapproved and any further steps to conclude the acquisition ceased.

(b) During the pendency of the office's review of any acquisition subject to the provisions of this section, the acquiring person may not make any material change in the operation of the attorney in fact or controlling company unless the office has specifically approved the change, nor shall the acquiring person make any material change in the management of the attorney in fact unless advance written notice of the change in management is furnished to the office. The term "material change in the operation of the attorney in fact" means a transaction that disposes of or obligates 5 percent or more of the capital and surplus of the attorney in fact or of any domestic reciprocal insurer. The term "material change in the management of the attorney in fact" means any change in management involving officers or directors of the attorney in fact or any person of the attorney or controlling company having authority to dispose of or obligate 5 percent or more of the attorney in fact's capital or surplus. The office shall approve a material change in operations if it finds the applicable provisions of subsection (7) have been met. The office may disapprove a material change in management if it finds that the applicable provisions of subsection (7) have not been met and in such case the attorney in fact shall promptly change management as acceptable to the office.

(c) If a request for a proceeding is filed, the proceeding must be conducted within 60 days after the date the written request for a proceeding is received by the office. A recommended order must be issued within 20 days after the date of the close of the proceedings. A final order shall be issued within 20 days after the date of the recommended order or, if

exceptions to the recommended order are filed, within 20 days after the date the exceptions are filed.

(7) The office may disapprove any acquisition subject to this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office issued pursuant to subsection (11), fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12), acquires an additional stock or ownership interest in an attorney in fact or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(8) The person or persons filing the application required by this section have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed application if no proceeding is conducted, that:

(a) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the attorney in fact or prejudice the interests of the reciprocal insurer's subscribers or the public.

(b) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

1. To liquidate the attorney in fact, sell its assets, or

merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management is fair and free of prejudice to the reciprocal insurer's subscribers or to the public; or

2. To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the attorney in fact, is fair and free of prejudice to the reciprocal insurer's subscribers or to the public.

(c) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the attorney in fact indicate that the acquisition is in the best interest of the reciprocal insurer's subscribers and in the public interest.

(d) The natural persons for whom background information is required to be furnished pursuant to this section have such backgrounds as to indicate that it is in the best interests of the reciprocal insurer's subscribers and in the public interest to permit such persons to exercise control over the attorney in fact.

(e) The directors and officers, if such attorney in fact or controlling company is a stock corporation, or the trustees, partners, owners, managers, joint venturers, or other persons performing duties similar to those of persons in such positions, if such attorney in fact or controlling company is not a stock corporation, to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation.

(f) The management of the attorney in fact after the acquisition will be competent, trustworthy, and will possess sufficient managerial experience so as to make the proposed operation of the attorney in fact not hazardous to the insurance-buying public.

(g) The management of the attorney in fact after the acquisition shall not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or otherwise acted in bad faith with respect thereto.

(h) The acquisition is not likely to be hazardous or prejudicial to the reciprocal insurer's subscribers or to the public.

(i) The effect of the acquisition would not substantially lessen competition in the line of insurance for which the reciprocal insurer is licensed or certified in this state or would not tend to create a monopoly therein.

(9) A vote by the stockholder of record, or by any other person, of any security acquired in contravention of this section is not valid. Any acquisition contrary to this section is void. Upon the petition of the attorney in fact, any or the controlling company, or the reciprocal insurer the circuit court for the county in which the principal office of the attorney in fact is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce this section. There shall be a private right of action in favor of the attorney in fact, or controlling company, to enforce this section. A demand upon the office that it

performs its functions may not be required as a prerequisite to any suit by the attorney in fact or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by the attorney in fact or controlling company to enforce this section. Any person who makes or proposes an acquisition requiring the filing of an application pursuant to this section, or who files such an application, shall be deemed to have thereby designated the Chief Financial Officer, or his or her assistant or deputy or another person in charge of his or her office, as such person's agent for service of process under this section and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

(10) Any approval by the office under this section does not constitute a recommendation by the office of the tender offer or exchange offer, or acquisition, if no tender offer or exchange offer is involved. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute of limitations period for the prosecution of an offense committed under this subsection is 5 years.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the attorney in fact as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party

may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the attorney in fact is relieved of any duty to register or report under this section which may arise out of the attorney in fact's relationship with the person unless the office disallows the disclaimer.

(12) If the office determines that any person or any affiliated person of such person has acquired 10 percent or more of the outstanding voting securities of an attorney in fact or controlling company which is a stock corporation, or 10 percent or more of the ownership interest of an attorney in fact or controlling company which is not a stock corporation, without complying with this section, the office may order that the person and any affiliated person of such person cease acquisition of the attorney in fact or controlling company and, if appropriate, divest itself of any stock or ownership interest acquired in violation of this section.

(13)(a) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of the reciprocal insurer whose attorney in fact or controlling company is acquired in violation of this section.

(b) If any reciprocal insurer is subject to suspension or revocation pursuant to paragraph (a), any other reciprocal insurer using the same attorney in fact shall also be subject to suspension or revocation. In such case, the office may offer any affected reciprocal insurer, through its subscriber representatives, the ability to cure any suspension or

revocation by procuring another attorney in fact acceptable to the office or taking any other action agreed to by the office.

Section 19. Section 629.227, Florida Statutes, is created to read:

629.227 Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to s. 629.081 or s. 629.225 must include, but need not be limited to:

(1) A sworn biographical statement on forms adopted by the commission that shall include, but not be limited to, the following information:

(a) Occupations, positions of employment, and offices held during the past 20 years, including the principal business and address of any business, corporation, or organization where each occupation, position of employment, or office occurred.

(b) Whether the person was, at any time during such 10-year period, convicted of any crime other than a traffic violation.

(c) Whether the person has been, during such 10-year period, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and the disposition of the proceeding.

(d) Whether, during such 10-year period, the person has been the subject of any proceeding under the federal Bankruptcy Act.

(e) Whether, during such 10-year period, any person or other business or organization in which the person was a director, officer, trustee, partner, owner, manager, or other official has been subject of any proceeding under the federal Bankruptcy Act, either during the time of that person's tenure

with the business or organization or within 12 months thereafter.

(f) Whether, during such 10-year period, the person has been enjoined, temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details as to any such event.

(g) Whether, during such 20-year period, the person served as the attorney in fact, a subscribers' advisory committee member, or any other manager or officer of a reciprocal insurer or an insurer that became insolvent or had its certificate of authority suspended or revoked.

(2) Fingerprints of each person.

(3) Authority for release of information in regard to the investigation of such person's background.

(4) Any additional information as the office deems necessary to determine the character, experience, ability, and other qualifications of the person or affiliated person of such person for the protection of the reciprocal insurer's subscribers and of the public.

Section 20. Section 629.229, Florida Statutes, is created to read:

629.229 Attorney in fact, officers, and directors of insolvent reciprocal insurers or other insurers.—Any person who served as an attorney in fact, or as an officer, director, or manager of an attorney in fact, any member of a subscribers' advisory committee of a reciprocal insurer doing business in

this state, or an officer or director of any other insurer doing business in this state, and who served in that capacity within the 2-year period before the date the insurer or reciprocal insurer became insolvent, for any insolvency that occurs on or after July 1, 2024, may not thereafter:

(1) Serve as an attorney in fact, or as an officer, director, or manager of an attorney in fact, or a member of a subscribers advisory committee of a reciprocal insurer doing business in this state, or an officer or director of any other insurer doing business in this state; or

(2) Have direct or indirect control over the selection or appointment of an attorney in fact, or of an officer, director, or manager of an attorney in fact, or a member of the subscribers committee of a reciprocal insurer doing business in this state, or an officer or director of any insurer doing business in this state, through contract, trust, or by operation of law,

unless the individual demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 21. Section 629.261, Florida Statutes, is amended to read:

629.261 Nonassessable policies.—Upon impairment of the surplus of a nonassessable reciprocal insurer, the office shall revoke the authorization issued under s. 629.291(5) or s. 629.091(3).

~~(1) If a reciprocal insurer has a surplus as to policyholders required of a domestic stock insurer authorized to~~

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~~transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the office shall issue its certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.~~

~~(2) Upon impairment of such surplus, the office shall forthwith revoke the certificate.~~ Such revocation does ~~shall~~ not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but, after such revocation, no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

~~(3) The office shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it; except that, if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.~~

Section 22. Section 629.291, Florida Statutes, is amended to read:

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629.291 Merger or conversion.—

(1) A ~~domestic~~ reciprocal insurer, upon affirmative vote of not less than two-thirds of its subscribers who vote on such merger pursuant to due notice, and subject to ~~the~~ approval by ~~of the~~ office of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer, to be thereafter governed by the applicable sections of the insurance code. However, a domestic stock insurer may not convert to a reciprocal insurer.

(2) A plan to merge a reciprocal insurer with another reciprocal insurer or for conversion of the reciprocal insurer to a stock or mutual insurer shall be filed on forms adopted by the office and contain such information as the office reasonably requires to evaluate the transaction ~~Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance~~.

(3) The office may ~~shall~~ not approve any plan for such merger or conversion which is inequitable to subscribers or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer, as determined in accordance with s. 629.281, and a reasonable length of time within which to exercise such right.

(4) Reinsurance of all or substantially all of the insurance in force of a ~~domestic~~ reciprocal insurer in another insurer shall be deemed to be a merger for the purposes of this section.

(5)(a) An assessable reciprocal insurer may convert to a

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nonassessable reciprocal insurer if:

1. The subscribers' advisory committee approves the conversion;

2. The attorney in fact submits the application for conversion on the required application form; and

3. The office finds that the application for conversion meets the minimum statutory requirements.

(b) If the office approves the application for conversion, the assessable reciprocal insurer may convert to a nonassessable reciprocal insurer by:

1. Extinguishing the contingent liability of subscribers under all policies then in force in this state;

2. Omitting contingent liability provisions in all policies delivered or issued in this state after the conversion; and

3. Otherwise extinguishing the contingent liability of all of its subscribers. However, if the reciprocal insurer is transacting insurance as an authorized insurer in another state and that state's laws require the insurer to issue policies with contingent liability provisions, the insurer may issue contingent liability policies in that other state.

(c) If the surplus of the reciprocal insurer becomes impaired, the insurer may no longer issue nonassessable policies or convert assessable policies to nonassessable policies, and the provisions of s. 629.301 shall apply.

Section 23. Section 629.525, Florida Statutes, is created to read:

629.525 Rulemaking authority.—The commission shall adopt, amend, or repeal rules necessary to implement this chapter.

Section 24. Paragraph (h) of subsection (3) of section

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163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(h) "Local government liability pool" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~ or any self-insurance program created pursuant to s. 768.28(16), formed and controlled by counties or municipalities of this state to provide liability insurance coverage for counties, municipalities, or other public agencies of this state, which pool may contract with other parties for the purpose of providing claims administration, processing, accounting, and other administrative facilities.

Section 25. Subsection (3) of section 626.9531, Florida Statutes, is amended to read:

626.9531 Identification of insurers, agents, and insurance contracts.—

(3) For the purposes of this section, the term "risk bearing entity" means a reciprocal insurer as defined in s. 629.011 ~~s. 629.021~~, a commercial self-insurance fund as defined in s. 624.462, a group self-insurance fund as defined in s. 624.4621, a local government self-insurance fund as defined in s. 624.4622, a self-insured public utility as defined in s. 624.46225, or an independent educational institution self-insurance fund as defined in s. 624.4623. For the purposes of this section, the term "risk bearing entity" does not include an authorized insurer as defined in s. 624.09.

Section 26. This act shall take effect July 1, 2024.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27
Meeting Date

FISCAL
Committee

1622
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brason

Phone 561 215 2581

Address 12031 COPOZO
Street

Email JBrason@gmail.

PBG FL 33418
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/2024
Meeting Date

Fiscal Policy
Committee

1622
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kevin Jacobs

Phone (850) 413-5011

Address 200 E Gaines St
Street

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Tallahassee FL 32301
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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1624
INTRODUCER:	Appropriations Committee on Agriculture, Environment, and General Government; Regulated Industries Committee; and Senator Collins
SUBJECT:	Energy Resources
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Fav/CS**
2.	Schrader/Davis	Betta	AEG	**Fav/CS**
3.	Schrader	Yeatman	FP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1624 amends several sections of Florida law and creates new statutory provisions relating to energy resources. In summary, the bill:

- Creates limitations on local government regulation of natural gas resiliency and reliability infrastructure.
- Revises energy guidelines for public businesses, deleting requirements relating to the Florida Climate-Friendly Preferred Products List, and state vehicle fuel efficiency.
- Requires the Department of Management Services (DMS) to develop the Florida Humane Preferred Products List to identify certain products that appear to be largely made free from forced labor.
- Adds "development districts" to a provision that prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy or taking any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by utilities, gas districts, natural gas transmission companies, and certain liquefied petroleum gas dealers, dispensers, and cylinder exchange operators.
- Adds "development districts" to a provision that prohibits a municipality, county, special district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types supplied by the entities above.

- Requires all electric cooperatives and municipal electric utilities to enter into and maintain certain mutual aid agreements and submit an annual attestation to qualify to receive state financial assistance for disaster recovery.
- Permits the Public Service Commission (PSC) to approve upon petition by a public utility, certain electric vehicle (EV) charging programs if the PSC determines that the public utility's general body of ratepayers, as a whole, will not pay to support recovery of its electric vehicle charging investment by the end of the useful life of the assets dedicated to the electric vehicle charging service.
- Requires the PSC to conduct an annual proceeding to determine prudently incurred natural gas facilities relocation costs for cost recovery by natural gas public utilities through a charge separate from the utility's base rates.
- Substantially revises legislative intent as it pertains to part II, of ch. 377, F.S., which provides energy resource planning and development policies for Florida. The revisions also provide updated energy policy goals and state policies as they relate to energy resource planning and development.
- Eliminates a requirement that the Department of Agriculture and Consumer Services (DACS), when analyzing the energy data collected and preparing long-range forecasts of energy supply and demand, forecasts contain plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas. Instead, such forecasts must contain an analysis of the extent to which domestic energy resources, including renewable energy sources, are being utilized in the state. It also revises certain related considerations and assessments.
- Revises the duties of the DACS as it relates to the promotion of the development and use of renewable energy sources. The section deletes a requirement that the DACS establish goals and strategies for increasing the use of renewable energy in the state.
- Repeals the Florida Energy and Climate Protection Act (Renewable Energy and Energy-Efficient Technologies Grants Program), Florida Green Government Grants Act, Energy Economic Zone Pilot Program, and Qualified Energy Conservation Bonds provisions.
- Provides procedures for handling existing applications and contracts relating to the above repealed programs.
- Prohibits the construction, operation, or expansion of offshore wind energy facilities and wind turbines located on real property within one mile of the state's coastline or on waters of the state.
- Requires the Department of Environmental Protection (DEP) to review federal wind energy lease applications and signify DEP's approval or objection.
- Increases the minimum length of an intrastate natural gas pipeline that requires certification under the Natural Gas Transmission Pipeline Siting Act from 15 miles to 100 miles.
- Prohibits homeowners associations from disallowing certain types or fuel sources of energy production and appliances that use such fuels in their governing documents.
- Directs the PSC to conduct an assessment, in consultation with the Department of Emergency Management (DEM), of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. The provision also requires the PSC to submit a report to the Legislature.
- Directs the PSC to study and evaluate, in partnership with public utilities and in consultation with the DEM, the technical and economic feasibility of using advanced nuclear power technologies, including small modular reactors (SMRs), to meet the state's electrical power

needs, and research means to encourage and foster the installation and use of such technologies at military installations in the state. The provision also requires the PSC to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives.
- Directs the Florida Department of Transportation (FDOT), in consultation with the Office of Energy within the DACS, to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system. The provision also requires the FDOT to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives.
- Makes conforming changes.

The bill may have a significant negative fiscal impact on state expenditures. See Section V., Fiscal Impact Statement.

The bill has an effective date of July 1, 2024.

II. Present Situation:

Florida Energy Consumption and Generation

Florida is the third-largest energy consuming state; however, it uses less energy per capita than all but six other states. Florida is also the second-largest producer of electricity in the nation (behind Texas). Natural gas is, by far, the largest energy source in Florida, and has been since 2003 when it surpassed coal.[1] As of 2022, the energy sources, as a percentage of all energy sources in Florida, are as follows:
- Natural gas: 69.55 percent
- Nuclear: 11.16
- Coal: 6.40
- Renewables: 5.76
- Other: 5.04
- Firm Inter-Region Interchange: 1.91
- Distillate (i.e. fuel oil/diesel fuel): 0.16
- Residual: 0.01
- Non-utility generators: less than 0.01[2]

Renewable Energy

Section 366.91, F.S., establishes a number of renewable policies for the state. The purpose of these policies, as established in statute, states that it is in the public interest to promote the development of renewable energy resources in this state.[3] Further, the statute is intended to

[1] United States Energy Information Administration, *Florida Profile Analysis*, Feb. 15, 2024, https://www.eia.gov/state/analysis.php?sid=FL#:~:text=Solar%20energy%20and%20biomass%20provide,generation%20 (last visited Feb. 20, 2024).
[2] Florida Reliability Coordinating Council, *2023 Regional Load & Resource Plan FRCC-MS-PL-502, Version: 1*, s-18, Jun. 6, 2023 (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Utilities/Electricgas/TenYearSitePlans//2023/FRCC_RLRP.pdf).
[3] Section 366.91(1), F.S

encourage fuel diversification to meet Florida's growing dependency on natural gas for electric production, minimize the volatility of fuel costs, encourages investment within the state, improve environmental conditions, and make Florida a leader in new and innovative technologies.[4]

The section defines "renewable energy" to mean:

> [E]lectrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[5]

The section defines "biogas" as "a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas,"[6] and "biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."[7]

Biofuels

Unlike other renewable energy sources, biomass can be converted directly into a liquid fuel. These fuels, called "biofuels" can be used for transportation fuel and other energy uses. The most common types of biofuels currently in use are ethanol and biodiesel.[8]

Ethanol is made from various plant material and is an alcohol blending agent mixed with traditional gasoline to reduce emissions. The most common type is E10 (10 percent ethanol and 90 percent gasoline) and it is approved for use in most conventional gasoline powered engines. Some vehicles, called flexible fuel vehicles, are designed to run on E15 (15 percent ethanol and 85 percent gasoline). Approximately 97 percent of gasoline sold in the United States has some amount of ethanol in it. The most common method of producing ethanol is through fermentation, where microorganisms metabolize plant sugars to produce ethanol.[9]

Biodiesel differs from ethanol in that it is meant as a cleaner-burning replacement for conventional (i.e. petroleum-based) diesel fuel. It is derived, generally, from new and used

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[4] *Id.*
[5] Section 366.91(2)(e), F.S.
[6] Section 366.91(2)(a), F.S.
[7] Section 366.91(2)(b), F.S.
[8] United States Department of Energy, *Biofuel Basics*, https://www.energy.gov/eere/bioenergy/biofuel-basics#:~:text=The%20two%20most%20common%20types,first%20generation%20of%20biofuel%20technology (last visited Feb. 1, 2024).
[9] *Id.*

vegetable oils and animal fats. Biodiesel is produced by combining alcohol with fats.[10] Biodiesel is generally blended with petroleum-based diesel for consumption as a vehicle fuel.[11]

Renewable diesel fuel is a growing industry. The fuel, chemically similar to petroleum-based diesel fuel, can be used as a "drop-in" replacement for petroleum-based diesel fuel and can be seamlessly blended, transported, and even co-processed with petroleum-based diesel.[12] The production method for renewable diesel fuel is more complex than biodiesel and most is produced by hydrogenation of triglycerides, a similar process to that used for desulfurization of petroleum diesel. Other methods can also be used for renewable diesel production, including gasification and pyrolysis.[13]

Other biofuels, including renewable heating oil, renewable jet fuel (sustainable aviation fuel, alternative jet fuel, biojet), renewable naphtha, and renewable gasoline are also currently in various stages of development and commercial implementation.[14]

Natural Gas and Renewable Natural Gas

Natural gas is a fossil energy source which forms beneath the earth's surface. Natural gas contains many different compounds, the largest of which is methane. [15] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as "fracking." The term renewable natural gas (RNG) refers to biogas that has been upgraded to use in place of fossil fuel natural gas (i.e. conventional natural gas).[16]

Section 366.91, F.S., identifies sources for producing RNG as a potential source of renewable energy.[17] The section specifically defines renewable natural gas as anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater. Under the definition, such gas may be used as a transportation fuel or for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production

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[10] *Id.*
[11] United States Energy Information Administration, *Biofuels explained*, Jul. 19, 2022, https://www.eia.gov/energyexplained/biofuels/ (last visited Feb. 1, 2024).
[12] United States Energy Information Administration. *Biofuels explained: Biodiesel, renewable diesel, and other biofuels*, Jul. 29, 2022, https://www.eia.gov/energyexplained/biofuels/biodiesel-rd-other-basics.php, (last visited Feb. 1, 2024).
[13] *Id.*
[14] United States Energy Information Administration, *Biofuels explained*, *supra* note 11.
[15] United States Energy Information Administration, *Natural gas explained*, Dec. 27, 2022, https://www.eia.gov/energyexplained/natural-gas/ (last visited Feb. 1, 2024)
[16] Environmental Protection Agency, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, https://www.epa.gov/lmop/renewable-natural-gas (last visited Feb. 1, 2024).
[17] Section 366.91(2)(e), F.S., defines "renewable energy, in part, as energy produced from biomass. Section 366.91(2)(b), F.S., defines "biomass" in part, as "a power source that is comprised of, but not limited to, combustible residues or gases from…waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas." RNG would be such a combustible gas.

facilities, and organic waste management operations.[18] Raw biogas has a methane content between 45 and 65 percent.[19] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements. After this process, the nitrogen and oxygen content is reduced and the RNG has a methane content comparable to natural gas and is thus a suitable energy source in applications that require pipeline-quality gas, such as vehicle applications.[20]

RNG meeting certain standards, qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[21] This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[22]

Hydrogen Fuel

The production of hydrogen involves the separation of the element from other elements in which it occurs. While there are many different sources of hydrogen and methods for producing it as a fuel, the most common methods used currently are steam-methane reforming and electrolysis.[23] Through either method, hydrogen is not an energy source, per se, since it is produced using other energy sources. Rather, produced hydrogen is an energy carrier.[24]

Steam-Methane Reforming

The most-widely used method for hydrogen production, which accounts for nearly all commercially-produced hydrogen in the United States, is steam-methane reforming. With steam-methane reforming, hydrogen atoms are separated from carbon atoms in methane using high temperature (1,300-1,800 degrees Fahrenheit) under 3-25 bar pressure[25] in the presence of a catalyst. The end-result of this process is the production of hydrogen, carbon-monoxide, and a small amount of carbon dioxide.[26]

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[18] Environmental Protection Agency, *supra* note 16.
[19] *Id.*
[20] United States Department of Energy, *Renewable Natural Gas Production*, https://afdc.energy.gov/fuels/natural_gas_renewable.html (last visited Feb. 1, 2024).
[21] United States Department of Energy, *Renewable Fuel Standard*, https://afdc.energy.gov/laws/RFS#:~:text=The%20Renewable%20Fuel%20Standard%20(RFS,Act%20of%202007%20(EISA) (last visited: Feb. 1, 2024).
[22] Environmental Protection Agency, *Renewable Fuel Standard Program*, https://www.epa.gov/renewable-fuel-standard-program (last visited Feb. 1, 2024).
[23] United States Energy Information Administration, *Hydrogen Explained: Production of Hydrogen*, Jan. 21, 2022, https://www.eia.gov/energyexplained/hydrogen/production-of-hydrogen.php#:~:text=The%20two%20most%20common%20methods,electrolysis%20(splitting%20water%20with%20electricity.(last visited Feb. 1, 2024)
[24] International Renewable Energy Agency, *Hydrogen*, available at https://www.irena.org/Energy-Transition/Technology/Hydrogen (last visited Feb. 1, 2024).
[25] One bar equals 14.5 pounds per square inch of pressure. For comparison, at sea level, the average air pressure on Earth is 1.0132 bars. National Oceanic and Atmospheric Administration, *Air Pressure*, https://www.noaa.gov/jetstream/atmosphere/air-pressure#:~:text=The%20standard%20pressure%20at%20sea,the%20atmosphere%20decreases%20with%20height (last visited Feb. 1, 2024).
[26] United States Energy Information Administration, *Hydrogen Explained: Production of Hydrogen, supra* note 23.

For industrial facilities and petroleum refineries, natural gas is the typical base material from which to produce hydrogen by steam-methane reforming. Biogas and landfill gas is also a base material to produce hydrogen used by several fuel cell power plants in the United States.

Electrolysis

Electrolysis, in the sense of hydrogen production, means a process where hydrogen is split from water using an electric current. On a large, commercial scale, the process may be referred to as power-to-gas, where power is electricity and gas is hydrogen.[27] This hydrogen is then captured and used or sold as an end product or as a fuel to generate electricity.[28] The electrolysis process itself is emission-free and has no by-products other than hydrogen and oxygen. However, the energy source used to power the electrolysis (which could be from renewables, nuclear, or fossil fuels) may or may not be emission-free or have other byproducts.

Hydrogen Categories

Recently, to distinguish between the energy sources used to power hydrogen production, hydrogen producers, marketers, government agencies, and others have used a color-coded system. The nine commonly used color categories are detailed below:

- Green: Hydrogen produced by water electrolysis and employing renewable electricity as the fuel source. It is so called because the process itself does not produce emissions.
- Blue: Hydrogen produced from fossil fuels, but the carbon dioxide produced by the process is sequestered underground. Thus, the process is considered carbon neutral.
- Gray: Hydrogen produced by steam-methane reforming and the emissions produced from the burning of fossil fuels in the method are released into the atmosphere.
- Black or Brown: Hydrogen produced from the burning of coal, "black" being from the burning of bituminous coal and "brown" being from the burning of lignite coal. A comparatively large amount of carbon dioxide and carbon monoxide is released into the atmosphere with this type of production.
- Turquoise: This now experimental method of hydrogen production involves the thermal splitting of methane through pyrolysis. Though carbon is formed in this process, it is in a solid state that can be stored and not a carbon dioxide gas.
- Purple: Hydrogen made using nuclear power and heat through the combined chemo thermal electrolysis splitting of water.
- Pink: This is the production of hydrogen through electrolysis where the energy source is electricity from a nuclear power plant.
- Red: Hydrogen produced through high-temperature catalytic splitting of water using nuclear power thermal energy as an energy source.
- White: Naturally-occurring hydrogen.[29]

[27] *Id*.
[28] Florida Public Service Commission, *Bill Analysis for SB 1162* (Mar. 14, 2023) (on file with the Senate Regulated Industries Committee).
[29] Bulletin H2, *Hydrogen Colours Codes*, available at https://www.h2bulletin.com/knowledge/hydrogen-colours-codes/ (last visited: Jan. 25, 2024).

Transmission and Use of Hydrogen Fuel

Due to hydrogen's low volumetric energy density, transportation, storage, and final delivery to the point of use, it can have a significant impact on the cost of using hydrogen as a fuel carrier. These factors can lead to inefficiencies that increase the farther hydrogen must be transported before reaching its end use.[30] Thus, currently, most hydrogen is produced in close proximity to its end use.[31] However, technology is in development that may bring these costs down and allow for easier transport and transmission of hydrogen.[32]

The two typical methods for transporting hydrogen fuel currently are via pipeline or by truck through the use of cryogenic liquid tanker trucks or gaseous tube trailers. Pipelines are most popular in areas where demand is high and expected to remain stable or grow. Trucking of hydrogen is used in areas with less demand.[33]

Potential uses for hydrogen are in:[34]

- Industrial uses such as powering oil refineries and powering ammonia, methanol, and steel production. Currently, this is the largest use, by far, for hydrogen.
- Transportation, powering hydrogen-fueled vehicles.
- Buildings where hydrogen can be blended into existing natural gas networks. It is possible currently to blend small amounts of hydrogen in existing natural gas transmission systems with little to no changes to infrastructure, equipment, and appliances.
- Power generation where emerging technology is available to use hydrogen as a medium to store renewable energy, such as solar and wind. Hydrogen and ammonia can be used in gas turbines to increase power system flexibility, and ammonia can be used to reduce emissions from coal-fired power plants.

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[35] The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[36] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[37]

[30] United States Office of Energy Efficiency and Renewable Energy, *Hydrogen Delivery*, available at https://www.energy.gov/eere/fuelcells/hydrogen-delivery (last visited: Feb. 1, 2024).
[31] Florida Public Service Commission, *Bill Analysis for SB 1162, supra* note 28.
[32] *See* Florida Public Service Commission, *Bill Analysis for SB 1162, supra* note 28, which describes potential new technologies that can overcome the transportation and transmission cost hurdle for hydrogen.
[33] United States Office of Energy Efficiency and Renewable Energy, *supra* note 30.
[34] International Renewable Energy Agency, *supra* note 24.
[35] Section 350.001, F.S.
[36] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, http://www.psc.state.fl.us (last visited Feb. 1, 2024).
[37] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Feb. 1, 2024).

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid[38] and may order the addition or repair of infrastructure as necessary.[39] The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities[40] (called "public utilities" under ch. 366, F.S.).[41] However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[42] Municipally-owned utility rates and revenues are regulated by their respective local governments or local utility boards. Rates and revenues for a cooperative utility are regulated by its governing body elected by the cooperative's membership.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a municipality. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, per se, for a "municipal utility," variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.[43] Florida also has 27 municipally-owned gas utilities and four special gas districts.[44]

Rural Electric Cooperatives in Florida

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives.[45] These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million customers.[46] Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.[47]

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[38] Section 366.04(5) and (6), F.S.
[39] Section 366.05(1) and (8), F.S.
[40] Section 366.05, F.S.
[41] Section 366.02(8), F.S.
[42] Florida Public Service Commission, *About the PSC*, *supra* note 37.
[43] Florida Municipal Electric Association, *About Us*, https://www.flpublicpower.com/about-us (last visited Feb. 1, 2024).
[44] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf). A "special gas district" is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a "special district" as "a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."
[45] Florida Electric Cooperative Association, *Members*, https://feca.com/members/ (last visited Feb 1, 2024).
[46] Florida Electric Cooperative Association, *Our History*, https://feca.com/our-history/ (last visited Feb. 1, 2024).
[47] *Id.*

Public Electric and Gas Utilities in Florida

There are four investor-owned electric utility companies (electric IOUs) in Florida: Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation (FPUC).[48] In addition, there are eight investor-owned natural gas utility companies (gas IOUs) in Florida: Florida City Gas, Florida Division of Chesapeake Utilities, FPUC, FPUC-Fort Meade Division, FPUC-Indiantown Division, Peoples Gas System, Sebring Gas System, and St. Joe Natural Gas Company. Of these eight gas IOUs, five engage in the merchant function servicing residential, commercial, and industrial customers: Florida City Gas, FPUC, FPUC-Fort Meade Division, Peoples Gas System, and St. Joe Natural Gas Company. Florida Division of Chesapeake Utilities, FPUC-Indiantown Division, and Sebring Gas System are only engaged in firm transportation service.[49]

Electric IOU and Gas IOU rates and revenues are regulated by the PSC and the utilities must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[50]

Section 366.041(2), F.S., requires public utilities to provide adequate service to customers. As compensation for fulfilling that obligation, s. 366.06, F.S., requires the PSC to allow the IOUs to recover honestly and prudently invested costs of providing service, including investments in infrastructure and operating expenses used to provide electric service.[51]

Natural Gas Transmission

Natural gas transmission companies are regulated by the PSC under ch. 368, F.S. The term "natural gas transmission company," as defined in s. 368.103, F.S., "means any person owning or operating for compensation facilities located wholly within this state for the transmission or delivery for sale of natural gas." The term does not include "any person that owns or operates facilities primarily for the local distribution of natural gas or that is subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. ss. 717 et seq., or any municipalities or any agency thereof, or a special district created by special act to distribute natural gas." Section 364.104, F.S., authorizes the PSC to "fix and regulate rates and services of natural gas transmission companies, including, without limitation, rules and regulations for:"

- Determining customers and services classifications;
- Determining rate applicability; and
- "Ensuring that the provision (including access to transmission) or abandonment of service by a natural gas transmission company is not unreasonably preferential, prejudicial, or unduly discriminatory."

[48] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 44, at 5.
[49] *Id* at 14. Firm transportation service is offered to customers under schedules or contracts which anticipate no interruption under almost all operating conditions. *See* Firm transportation service, 18 CFR s. 284.7.
[50] PSC, *2022 Annual Report*, p. 6, (available at: https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf) (last visited Feb. 1, 2024).
[51] *Id*.

Section 368.105, F.S., provides the procedures for the PSC to set rates and services requirements for natural gas transmission companies in Florida.

Under chapter 368, F.S., the PSC is authorized to inspect intrastate natural gas systems to ensure compliance with rules and regulations regarding safety standards.[52] Currently, Florida has three major pipelines: Florida Gas Transmission Company, Gulfstream Natural Gas System, and Sabal Trail Interstate Pipeline. The state also has two minor pipelines: Gulf South Pipeline Company and Southern Natural Gas.[53]

Experimental and Transitional Rates

Section 366.075, F.S., authorizes the PSC to approve experimental or transitional rates for the purpose of encouraging energy conservation or efficiency. This provision is used by the PSC to allow electric and natural gas utilities under its rate-regulatory jurisdiction to conduct limited scope pilot programs.

Such rates must be limited in geographic area and be for a limited period of time. The PSC may approve the area used in testing experimental rates and must specify in the order setting those rates the area that will be affected by those rates. The PSC can extend this time period "if it determines that further testing is necessary to fully evaluate the effectiveness of such experimental rates."

Mutual Aid Agreements for Electric Utilities

Florida law requires electric utilities to take steps to minimize outages during major weather events. Electric IOUs are required to file a transmission and distribution storm protection plan, for approval by the PSC that covers their immediate 10-year planning period. This plan must explain the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. This plan is updated every three years by the utility.[54]

For municipal electric utilities and rural electric cooperatives, the PSC rule requires the utilities to submit, every three years, a report as to the extent that their "construction standards, policies, practices, and procedures are designed to address the ability of transmission and distribution facilities to mitigate damage caused by extreme weather."[55]

During routine outage events, electric utilities will generally use their own crews or contractors to repair damage and restore power. However, during major natural disasters (such as a tropical weather system, severe winter weather, or wildfire), the task of restoring power is typically so considerable that utilities will need outside assistance to fully restore power in a timely manner.[56] Mutual aid agreements allow utilities to voluntarily form partnerships among utilities in a region

[52] Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, *supra* note 44, at 13.
[53] *Id.*
[54] Section 366.96, F.S.
[55] Fla. Admin. Code R. 25-6.0343(3).
[56] Miles Keogh and Sharon Thomas, National Association of Regulatory Commissioners, *Regional Mutual Assistance Groups: A Primer*, Nov. 2015 (available at: https://pubs.naruc.org/pub/536E475E-2354-D714-5130-C13478337428)(last visited Feb. 21, 2024).

to obtain this assistance at agreed-upon terms. These agreements allow utilities to avoid having to keep large numbers of emergency crews on staff all of the time. The types of resources shared during an assistance response include utility employees and contractors, specialized utility and construction equipment, supplies, and information.[57]

Many of the mutual aid agreements in the United States among electric IOUs are managed by one of seven regional mutual assistance groups (RMAGs).[58] RMAGs "facilitate the process of identifying available restoration workers and help companies coordinate the logistics and personnel involved in restoration efforts."[59] The RMAG for Florida is the Southeastern Electric Exchange RMAG (SEE RMAG). The SEE RMAG has members in all the Gulf Coast states, the East Coast states (from Florida up to New Jersey), Pennsylvania, Ohio, Indiana, Illinois, Kentucky, and West Virginia.[60] Though membership in a mutual aid agreement is not required under Florida law for any electric utility, all four of Florida's electric IOUs are members of the SEE RMAG.

Municipal utilities and rural electric cooperatives have their own mutual assistance programs. The American Public Power Association (APPA), together with state and regional public power utilities and organizations, coordinates a network of mutual aid agreements for public power (called the Mutual Aid Network).[61] The Mutual Aid Network connects over 2,000 organizations to give or receive assistance during major power outages,[62] and municipal electric utilities and rural electric cooperatives can join through executing a joint APPA/National Rural Electric Cooperative Association Agreement.[63] Of Florida's 33 municipal electric utilities, 28 are part of the Mutual Aid Network;[64] and 15 of Florida's 16 distribution rural electric cooperatives are part of the Mutual Aid Network.[65]

Preemption over Utility Service Restrictions

Section 366.032, F.S., provides that "a municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or

[57] *Id*.
[58] PSC, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, at 24-25, (available at UtilityHurricanePreparednessRestorationActions2018.pdf (floridapsc.com) (last visited Feb. 22, 2024).
[59] Edison Electric Institute, *Understanding the Electric Power Industry's Response and Restoration Process*, Oct. 2016 (available at: https://www.eei.org/-/media/Project/EEI/Documents/Issues-and-Policy/Reliability-and-Emergency-Response/MA_101.pdf)(last visited Feb. 22, 2024).
[60] Southeastern Electric Exchange, *About SEE*, https://www.theexchange.org/aboutus.html (last visited Feb. 22, 2024).
[61] PSC, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, at 25, *supra* note 58.
[62] APPA, *Mutual Aid and Emergency Response*, https://www.publicpower.org/mutual-aid-and-emergency-response (last visited Feb. 22, 2024).
[63] APPA, *APPA-NRECA Mutual Aid Agreement*, https://www.publicpower.org/system/files/documents/APPA-NRECA%20Mutual%20Aid%20Agreement%20Updated_0.pdf (last visited Feb 22, 2024).
[64] APPA, *FEMA Mutual Aid Agreement-Region IV*, https://www.publicpower.org/fema-mutual-aid-agreement-region-iv (last visited Feb. 22, 2024).
[65] APPA, *NRECA* Members, https://www.publicpower.org/system/files/documents/Cooperative%20Mutual%20Aid%20Signatories%20from%20NRECA.pdf (last visited Feb. 22, 2024).

fuel sources of energy production which may be used, delivered, converted, or supplied" by the following:[66]

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Category I liquefied petroleum gas dealers, category II liquefied petroleum gas dispensers, or category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01, F.S.

Section 366.032(2), F.S., also prohibits (except to enforce the Florida Building Code and Florida Fire Prevention Code) a municipality, county, special district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types used, delivered, converted, or supplied by the entities above.

The section also provides that it acts retroactively to any provision that existed before its enactment in 2021.

Electric Vehicles

The U.S. Department of Energy's Alternative Fuels Data Center (AFDC) uses the term, "electric-drive vehicles," as referring collectively to hybrid electric vehicles (HEV), plug-in hybrid electric vehicles (PHEV), and all-electric vehicles (EV).[67] According to the AFDC:

- HEVs are primarily powered by an internal combustion engine that runs on conventional or alternative fuel and an electric motor using energy stored in a battery. The battery is charged through regenerative braking and the internal combustion engine, not by plugging in to charge.
- PHEVs are powered by an internal combustion engine and an electric motor using energy stored in a battery. They can operate in all-electric mode through a larger battery, which can be plugged in to an electric power source to charge. Most can travel between 20 and 40 miles on electricity alone, and then will operate solely on gasoline, similar to a conventional hybrid.

EVs use a battery to store the electric energy that is charged by plugging the vehicle into charging equipment. EVs always operate in all-electric mode and have typical driving ranges from 150 to 400 miles.[68]

The primary difference between an EV and a traditional internal combustion engine (ICE) vehicle lies in their drive trains. The main components of an EV power train are its battery, a

[66] To the extent of serving the customers they are authorized to serve.
[67] U.S. Dept. Energy, AFDC, *Hybrid and Plug-In Electric Vehicles*, https://afdc.energy.gov/vehicles/electric.html (last visited Feb. 22, 2024).
[68] *Id*.

motor, and ancillary systems. The main components of an ICE power train are its liquid fuel storage, combustion chambers and related cooling system, transmission, and an exhaust system.[69]

For purposes of vehicle registration, Florida law currently defines the term "electric vehicle" to mean "a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current."[70]

Increased interest in EVs has been driven by higher gas prices and greenhouse gas emission concerns.[71] However, limited EV range (and the related and range anxiety[72]), limitations in charging infrastructure, charging speed as it relates to time to refuel a traditional gasoline vehicle, and EV cost are some of the factors negatively impacting EV adoption.[73]

Electric Vehicle Charging Stations

EVs need access to charging stations. For most EV users, charging starts at home or at fleet facilities. Charging stations at other commonly-visited locations, however, such as work, public destinations, and along roadways, can offer more flexible fueling charging opportunities. The growth of charging stations has made longer distance travel with EVs more feasible and has helped grow the market for EVs. [74]

There are three general types of chargers:

- Level 1: Level 1 chargers use a standard 120-volt home outlet (i.e. a standard wall socket). Often EV automakers will include with the vehicle a charging cord that can plug directly into a 120-volt outlet. These are the slowest types of chargers and, on average, provide about five miles of driving distance per hour of charging.
- Level 2: Level 2 chargers use a 240-volt outlet. Such outlets are often used for larger home appliances with greater power needs, such as electric ovens and clothes dryers. To use such chargers at home, homeowners may need a professional to install a 240-volt outlet in a vehicle-accessible location and additional equipment installation may be necessary. Level 2 chargers can also be found in some public charging stations. Level two chargers, on average, provide about 25 miles of driving distance per hour of charging.
- Direct Charge Fast Chargers (DCFC): DCFC are the fastest types of chargers. These are not typically not found in homes, but are available at public charging stations and along

[69] Brandon S. Tracy, Cong. Research Serv., R47227, *Critical Minerals in Electric Vehicle Batteries*, (2022) (available at https://crsreports.congress.gov/product/pdf/R/R47227).
[70] Section 320.01(36), F.S.
[71] *Id*.
[72] Range anxiety is the feeling an EV driver has when the battery charge is low, and the usual sources of electricity are unavailable, striking a fear of being stranded. J.D. Power, *What is Range Anxiety with Electric Vehicles?*, Nov. 3, 2020, https://www.jdpower.com/cars/shopping-guides/what-is-range-anxiety-with-electric-vehicles (last visited Feb. 1, 2024).
[73] EV Connect, *10 Factors That Affect Widespread EV Adoption*, https://www.evconnect.com/blog/10-factors-affecting-ev-adoption (last visited Feb. 1, 2024).
[74] U.S. Dept. of Energy, *Developing Infrastructure to Charge Electric Vehicles*, https://afdc.energy.gov/fuels/electricity_infrastructure.html (Feb. 1, 2024).

roadways and highway routes. These types of chargers provide approximately 100 to 300 miles of driving for a 30-minute charge; some DCFC can charge even faster than this.[75]

EV Charging in Florida

Since the current regulatory structure of electric utilities in Florida includes exclusive service territories, the sale of electricity to retail, or end-use customers by a third party is not permitted.[76] The Florida Legislature created an exemption for electric vehicle charging in 2012, under s. 366.94(4), F.S., declaring that the provision of electric vehicle charging to the public by a non-utility is not considered a retail sale of electricity under ch. 366, F.S. The rates, terms, and conditions of EV charging by a non-utility are not subject to PSC regulation.[77]

Statistics provided by the U.S. Department of Energy show that Florida has the third largest EV charging infrastructure in the country, behind California and New York.[78] As of January 14, 2022, Florida has the following numbers of charging infrastructure:

- Station locations – 3,260.
- EV supply equipment ports – 9,072.
- Level 1 chargers – 24.
- Level 2 chargers – 6,843.
- DCFC – 2,205.

Natural Gas Transmission Pipeline Siting Act

Part VIII of ch. 403, F.S., is the Natural Gas Transmission Pipeline Siting Act (NGTPSA), and is Florida's process for licensing the construction and operation of natural gas pipelines in the state. The Federal Energy Regulatory Commission regulates interstate natural gas transmission and reviews proposals to build interstate natural gas pipelines. The Florida Department of Environmental Protection's (DEP's) role regarding pipelines is to handle in-state environmental regulatory matters for wetlands crossings, discharge of hydrostatic test waters and other applicable areas.[79] Under s. 403.9422, F.S., the PSC also has the responsibility to determine the need for a proposed natural gas pipeline regulated by NGTPSA and issue certificates of need as appropriate.

Section 403.9405(2), F.S., provides that the NGTPSA does not apply to:

- Natural gas transmission pipelines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification of that pipeline;
- Natural gas transmission pipelines for which a certificate of public convenience and necessity has been issued under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant

[75] Environmental Protection Agency, *Plug-in Electric Vehicle Charging: The Basics*, https://www.epa.gov/greenvehicles/plug-electric-vehicle-charging-basics (Feb. 1, 2024).
[76] FDOT, *EV Infrastructure Master Plan* (July 2021), p. 16, https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/planning/fto/fdotevmp.pdf (last visited Feb 1, 2024).
[77] Section 366.94(1), F.S.
[78] United States Department of Energy, *Alternative Fuels Data Center*, https://afdc.energy.gov/ (last visited Feb. 1, 2024).
[79] Florida Department of Environmental Protection, *Natural Gas Pipeline Siting Act*, https://floridadep.gov/water/siting-coordination-office/content/natural-gas-pipeline-siting-act (last visited Feb. 1, 2024).

to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, F.S., unless the applicant elects to apply for certification of that pipeline; and

- Natural gas transmission pipelines that are owned or operated by a municipality or any agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas, unless the applicant elects to apply for certification of that pipeline.

Nuclear Power

Nuclear power plants work, in a way, similarly to any other turbine-based power plant. In turbine-based power plants a moving fluid—water, steam, combustion gases, or even air—pushes blades mounted on a rotor. The force of the moving liquid spins the shaft of a generator. That generator then converts the kinetic energy of the spinning rotor to electrical energy. Types of turbines include steam, combustion (i.e. gas), hydroelectric, and wind.[80]

Nuclear power plants work the same way, in that steam is used to spin a turbine to produce electricity. The unique part of a nuclear power plant is how that steam is produced. In a nuclear power plant, heat is used to make steam, and this heat is produced by a controlled fission nuclear reaction.[81]

In a traditional nuclear power plant, uranium, which has been processed into small ceramic pellets and stacked together in a sealed metal tube (called a fuel rod), is the fuel source. Fuel rods are bundled together (typically in bundles of more than 200 rods) to form a fuel assembly. Reactor cores are generally made up of around 200 assemblies, depending on power level. In the reactor, fuel rods are immersed in water, which acts as a coolant and moderator. Control rods are then inserted into the reactor core to reduce the nuclear reaction or removed to increase the nuclear reaction. This reaction creates heat to turn water into the steam that fuels the turbine.

There are over 400 commercial reactors worldwide, including 93 in the United States.

Advanced Small Modular Reactors

Advanced small modular reactors (SMRs) are currently under development in the United States. SMRs differ from traditional large nuclear power plants—which can take over a decade to build between planning, regulatory approval, and construction—[82]in that they are made in factories and transported to sites ready to "plug and play" upon arrival. This reduces both capital costs and construction times. The smaller size of these reactors also makes them ideal for smaller electric grids and other locations where a large nuclear power plant is not feasible.[83]

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[80] United States Energy Information Administration, *Electricity Explained*, https://www.eia.gov/energyexplained/electricity/how-electricity-is-generated.php (last visited Feb. 1, 2024).
[81] United States Department of Energy, *NUCLEAR 101: How Does a Nuclear Reactor Work?*, https://www.energy.gov/ne/articles/nuclear-101-how-does-nuclear-reactor-work (last visited Feb. 1, 2024).
[82] United States Energy Information Administration, *Nuclear explained*, https://www.eia.gov/energyexplained/nuclear/us-nuclear-industry.php (last visited Feb. 1, 2024).
[83] United States Department of Energy, Office of Nuclear Energy, *Nuclear Reactor Technologies*, https://www.energy.gov/ne/nuclear-reactor-technologies (last visited Feb. 1, 2024).

Advanced Reactor Technologies

The Office of Nuclear Energy's Office of Advanced of Advanced Reactor Technologies (ART) sponsors research, development, and deployment of emerging nuclear reactor technologies. While the technologies are varied, ART's main areas of focus currently are:

- Developing assessment methods for evaluating advanced SMR technologies and characteristics;
- Developing and testing of materials, fuels and fabrication techniques;
- Resolving key regulatory issues identified by Nuclear Regulatory Commission and the nuclear industry; and
- Developing advanced instrumentation and controls and human-machine interfaces.[84]

Wind Energy

Wind energy is a form of renewable energy where wind is used to turn blades connected to a generator just downwind of the blades in the head (or nacelle) of a wind turbine. The spinning of this generator produces energy which can be used for specific needs or to provide power to the electric grid. A typical 2.8 megawatt, utility-scale wind turbine can produce enough electricity to power approximately 100,000 homes.[85] Wind power is the U.S.'s largest source of renewable energy;[86] however, its deployment in Florida is extremely limited. As of 2022, wind energy represented 0.38 percent of the total energy sources used in Florida;[87] none at the utility-scale. According to the United States Energy Information Administration, Florida does not have significant wind energy resources, onshore or offshore, and the state has no utility-scale-wind-powered generating capacity.[88]

Good places for wind turbines are where the annual average wind speed is nine miles per hour (or four meters per second) for small wind turbines and 13 miles per hour (or 5.8 meters per second) for utility scale. Favorable sites for development include tops of smooth, rounded hills; open plains and water; and mountain gaps that funnel and intensify wind—and wind speeds go up with increasing elevation.[89] Florida's lower wind speed (like much of the rest of the southeast U.S. where there is also little wind energy development) and flat topography limit the viability of wind energy production in the states.

Offshore wind is the newest application of wind energy. Offshore wind involves placing wind turbines over bodies of water where wind speeds are generally higher and more constant.[90] In depths of less than 60 meters, turbines can be fixed to the bottom of a body of water. For deeper

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[84] United States Department of Energy, Office of Nuclear Energy, *Advanced Reactor Technology*, https://www.energy.gov/ne/advanced-reactor-technologies (last visited Feb. 1, 2024).
[85] United States Office of Energy Efficiency and Reliability, *What is Wind Power*, https://windexchange.energy.gov/what-is-wind (last visited Feb. 22, 2024).
[86] *Id.*
[87] Florida Reliability Coordinating Council, *supra* note 2.
[88] United States Energy Information Administration, *Florida Profile Analysis*, *supra* note 1.
[89] United States Energy Information Administration, *Wind Explained*, Apr. 20, 2023, https://www.eia.gov/energyexplained/wind/where-wind-power-is-harnessed.php (last visited Feb. 22, 2024).
[90] American Geosciences Institute, *What are the advantages and disadvantages of offshore wind farms?*, https://www.americangeosciences.org/critical-issues/faq/what-are-advantages-and-disadvantages-offshore-wind-farms (last visited Feb. 22, 2024).

than 60 meters, turbines are floated, tethered to the floor of the body of water.[91] These turbines then use undersea cables to transmit electricity to the grid.[92]

Customer-Owned Renewable Generation

Section 366.91(2)(c), F.S., defines "customer-owned renewable generation" as "an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy." Under the traditional utility model, an electric utility would produce (or purchase at wholesale) energy which it, in turn, would provide to customers to power their homes and businesses through its energy grid. However, with the advent of technologies like electric vehicles, rooftop solar systems, battery storage systems, and smart appliances, customers are now able to provide services to support grid operations.[93]

Customer-owned generation, such as rooftop solar and other small-scale distributed energy resources (DERs), offer a number of benefits to both customers and utilities, including:

- Reduction in reliance on the centralized grid which can increase energy resilience in times of power-interruption in times such as extreme weather events;
- Supplying affordable electricity to customers; and
- Supporting decarbonization efforts.[94]

Despite its benefits, DERs can present challenges for electric utilities. Many of the electric grids today were designed, originally, for the 20th century where distributed energy generation was comparatively small or non-existent. [95] The grid was traditionally designed for centralized power generation and, primarily, a one-way power flow.[96] Greater system flexibility is needed where inputs of power may not be as predicable or controllable by the utilities themselves. The challenges for many grids include:

- The complexity of integrating a wide variety of highly-distributed energy sources.
- Variability of power production as wind and solar are not "always on" type of energy production methods, as this can present challenges in effective energy storage and management, reliability, and resilience.
- DERs can significantly influence electricity demand patterns, sometimes unpredictably. This can create issues with demand response and electricity load management.

[91] United States Office of Energy Efficiency and Reliability, *What is Wind Power, supra* note 85.
[92] United States Energy Information Administration, *Top 10 Things You Didn't Know About Offshore Wind Energy*, https://www.energy.gov/eere/wind/articles/top-10-things-you-didnt-know-about-offshore-wind-energy (last visited Feb. 22, 2024).
[93] Utility Dive, *Consumers as partners: The evolving utility business model*, Jan. 17, 2023, https://www.utilitydive.com/spons/consumers-as-partners-the-evolving-utility-business-model/640195/ (last visited Feb. 1, 2024).
[94] International Energy Agency, *Executive summary: Unlocking the Potential of Distributed Energy Resources*, https://www.iea.org/reports/unlocking-the-potential-of-distributed-energy-resources/executive-summary (last visited Feb. 1, 2024).
[95] *Id.*
[96] Dynamic Ratings, *What are Distributed Energy Resources*, https://www.dynamicratings.com/solutions/smart-infrastructure-solutions/distributed-energy-resources/ (Feb 1, 2024).

- The wide deployment of DERs and smart technology has raised data privacy and security concerns as these devices integrate with the grid.[97]

Smart demand response programs and load management strategies can help mitigate or reduce these issues.[98]

Climate Friendly Public Business

Section 286.29, F.S., requires state agencies to follow certain procedures to reduce greenhouse gas emissions in conducting public business. The section requires that state agencies:

- Consult with the "Florida Climate-Friendly Preferred Products List" produced by the Department of Management Services (DMS),[99] in procuring products from state term contracts.[100] If the price is comparable, they must procure such products.[101]
- Contract only with hotels or conference facilities for meetings and conferences as recognized by the Green Lodging Program.[102,103]
- Ensure vehicles meet minimum maintenance schedules shown to reduce fuel consumption and report such compliance to the DMS.[104]
- When state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan that such vehicles are selected for greatest fuel efficiency available for a given use class when fuel economy data is available.[105]
- Use ethanol and biodiesel blended fuels when available.[106]
- Procure biofuels for fleet, to the greatest extent practicable, if the agency administers central fueling operations.[107]

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is a state agency created by s. 20.14, F.S., and is headed by an elected Commissioner of Agriculture—who is also designated

[97] *Id.*
[98] *Id.*
[99] The DMS keeps a Florida Climate-Friendly Preferred Products List at https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/florida_climate_friendly_preferred_products_list, (last visited Feb. 1, 2024).
[100] Section 286.29(1), F.S.
[101] *Id.*
[102] The Florida Department of Environmental Protection designates and recognizes lodging facilities that make a commitment to conserve and protect Florida's natural resources through the Florida Green Lodging Program. To become designated, facilities must conduct a thorough property assessment and implement a specified number of environmental practices in five areas of sustainable operations: (1) communication and education with customers, employees, and the public; (2) waste reduction, reuse and recycling; (3) water conservation; (4) energy efficiency; and (5) indoor air quality. Florida Department of Environmental Protection, *Green Lodging*, https://floridadep.gov/osi/green-lodging/content/about-florida-green-lodging-program (Last visited Feb. 1, 2024).
[103] Section 286.29(2), F.S.
[104] Section 286.29(3), F.S.
[105] Section 286.29(4), F.S.
[106] Section 286.29(5), F.S.
[107] *Id.*

by the Florida Constitution as one of the three members of the Florida cabinet.[108] The DACS's responsibilities are wide-ranging, however, in general, they are to:

- Support and promote Florida agriculture;
- Protect the environment;
- Safeguard consumers; and
- Ensure the safety and wholesomeness of food.[109]

Energy Planning and Development

Section 377.601, F.S., provides the legislative intent in regards to part II, of ch. 377, F.S., which provides energy resource planning and development policies for Florida. The section states that the legislature finds that:

> [T]he state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and diversification, stabilizes energy costs, and reduces greenhouse gas emissions.

Relatedly, s. 377.601(2), F.S., provides that it is the policy of the state to:

- Develop and promote the effective use of energy, discourage all forms of energy waste, and recognize and address the potential of global climate change wherever possible;
- Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions;
- Include energy considerations in all state, regional, and local planning;
- Utilize and manage effectively energy resources used within state agencies;
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs;
- Include the full participation of citizens in the development and implementation of energy programs;

[108] FLA. CONST. art. IV, s. 4.
[109] Florida Department of Agriculture and Consumer Services, *About Us*, https://www.fdacs.gov/About-Us (last visited Feb. 1, 2024).

- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible;
- Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact;
- Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources;
- Consider in its decision-making, the social, economic, and environmental impacts of energy-related activities, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized; and
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within Florida.

Section 377.6015, F.S.,[110] provides the role of the DACS in the state's energy resource planning and development. The section provides that the DACS may employ staff and counsel as needed in the performance of its duties, prosecute and defend legal actions in its own name, and form advisory groups consisting of members of the public to provide information on specific issues.

The section also requires the DACS to:
- Administer the Florida Renewable Energy and Energy-Efficient Technologies Grants Program under s. 377.804, F.S.;
- Develop policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant;
- Administer the Florida Green Government Grants Act pursuant to s. 377.808, F.S., and set annual priorities for grants;
- Administer the information gathering and reporting functions pursuant to ss. 377.601-377.608, F.S.;
- Administer the provisions of the Florida Energy and Climate Protection Act pursuant to ss. 377.801-377.804, F.S.;
- Advocate for energy and climate change issues and provide educational outreach and technical assistance in cooperation with the state's academic institutions;
- Be a party in the proceedings to adopt goals and submit comments to the PSC pursuant to s. 366.82, F.S., which requires the PSC to adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of demand-side renewable energy systems; and
- Adopt rules pursuant to ch. 120, F.S., in order to implement all powers and duties described in the section.

Florida Renewable Energy and Green Government Programs

Part III of ch. 377, F.S., provides the state's renewable energy and green government programs, including the Florida Energy and Climate Protection Act in ss. 377.801-377.804, F.S.

[110] Section 377.703, F.S., also provides an extensive list of the DACS functions regarding energy supply and demand.

The purpose of the Florida Energy and Climate Protection Act is to "provide incentives for Florida's citizens, businesses, school districts, and local governments to take action to diversify the state's energy supplies, reduce dependence on foreign oil, and mitigate the effects of climate change by providing funding for activities designed to achieve these goals." The act's grant programs "are intended to stimulate capital investment in and enhance the market for renewable energy technologies and technologies intended to diversify Florida's energy supplies, reduce dependence on foreign oil, and combat or limit climate change impacts."[111]

The grants provided under the act, as part of the Renewable Energy and Energy-Efficient Technologies Grants Program administered by the DACS, "provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings"[112] Grants under the program may be provided to municipalities and county governments, established for-profit companies licensed to do business in Florida, universities and colleges in the state, utilities located and operating within the state, not-for-profit organizations, and other qualified persons as determined by the DACS.

Part III of ch. 377, F.S., also includes additional programs not under the Florida Energy and Climate Protection Act:

- The energy and conservation clearinghouse which develops a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures.[113]
- The Florida Green Governments Grant Act which provides grants to assist local governments in the development and implementation of programs that achieve green standards.[114]
- The Energy Economic Zone Pilot Program to develop "a model to help communities cultivate green economic development, encourage renewable electric energy generation, manufacture products that contribute to energy conservation and green jobs, and further implement chapter 2008-191, Laws of Florida, relative to discouraging sprawl and developing energy-efficient land use patterns and greenhouse gas reduction strategies."[115]
- The Natural Gas Fuel Fleet Vehicle Rebate Program which provides rebates for eligible expenses relating to investments in in the conversion, purchase of a natural gas fleet vehicles.[116]
- The Municipal Solid Waste-to-Energy program which provides grants to" municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill."[117]
- A program where the DACS is authorized to post information on its website information about the alternative fueling stations or electric vehicle charging stations available in the state.[118]

[111] Section 377.802, F.S.
[112] Section 377.804, F.S.
[113] Section 377.805, F.S.
[114] Section 377.808, F.S.
[115] Section 377.809, F.S.
[116] Section 377.810, F.S.
[117] Section 377.814, F.S.
[118] Section 377.815, F.S.

- A program operated by Office of Energy within the DACS for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D.[119]

Acts of Destruction against Energy Infrastructure

The National Conference of State Legislatures (NCSL) suggests that states should be aware of and be prepared for actual physical threats perpetrated by humans to energy infrastructure.[120] The U.S. Department of Energy's annual summary of Electric Emergency Incident and Disturbance Reports indicates at least 25 reports were filed as actual physical attacks in electric utilities perpetrated by humans in 2022, compared to six attacks in 2021.[121]

Cyber-attacks are also a growing threat to energy infrastructure. The growing reliance on digital technology to better utility infrastructure and business operations in general, has increased the exposure of these industries to cyber threats.[122] The annual summary of Electric Emergency Incident and Disturbance Reports indicated six cyber-related events in 2022, compared to seven for 2021.[123] However, according to the International Energy Agency, the publicly available information available on such cyber-attacks is limited due to under-reporting and lack of detection, and there is evidence that attacks have been growing rapidly since 2018.[124]

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[125]

A "homeowners' association" is defined as a:

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is

[119] Section 377.816, F.S. Qualified energy conservation bonds (QECBs) were created in the federal 2008 Energy Improvement and Extension Act. The purpose of the bonds were to federally fund states, territories, local governments, and tribal governments to issue QECBs to finance renewable energy and efficiency projects. United States Department of Energy, *Qualified Energy Conservation Bonds,* Aug. 2016 (available at: https://www.energy.gov/sites/prod/files/2017/04/f34/qecbpaper0816.pdf) (last visited Feb. 1, 2024). 26 U.S.C. s. 54D was repealed by Pub.L. 115-97, Title I, s. 13404(a), effective Dec. 22, 2017.

[120] The National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, updated May 22, 2023, available at *www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure* (last visited Feb. 1, 2024).

[121] *Id.;* U.S. Department of Energy, *Office of Cybersecurity, Energy Security, & Emergency Response, Electric Disturbance Events (OE-417) Annual Summaries*, available at https://www.oe.netl.doe.gov/OE417_annual_summary.aspx (last visited Feb. 1, 2024).

[122] International Energy Agency, *Cybersecurity – is the power system lagging behind?*, Aug. 1, 2023, (https://www.iea.org/commentaries/cybersecurity-is-the-power-system-lagging-behind).

[123] *Id.*

[124] *Id.*

[125] *See* s. 720.302(1), F.S.

> authorized to impose assessments that, if unpaid, may become a lien on the parcel.[126]

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[127]

Homeowners' associations are administered by a board of directors whose members are elected.[128] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.[129] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[130]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[131]

The governing document of a homeowners' association are:

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[126] Section 720.301(9), F.S.
[127] Section 720.302(5), F.S.
[128] *See* ss. 720.303 and 720.307, F.S.
[129] *See* ss. 720.301 and 720.303, F.S.
[130] Section 720.303(1), F.S.
[131] *See* s. 720.306(9)(c), F.S.

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.[132]

III. Effect of Proposed Changes:

Section 1 creates s. 163.3210, F.S., relating to natural gas resiliency and reliability infrastructure. The section provides that it is the intent of the Legislature to maintain, encourage, and ensure adequate and reliable fuel sources for public utilities. The section finds that resiliency and reliability of fuel sources for public utilities is critical to Florida's economy; the ability of the state to recover from natural disasters; and to the health, safety, welfare, and quality of life of Florida residents.

Under the section, a resiliency facility[133] is a permitted use in all commercial, industrial, and manufacturing land use categories in a local government comprehensive plan and all commercial, industrial, and manufacturing districts. Such facilities must comply with setback and landscape criteria that would apply to other similar uses and local governments may adopt ordinances specifying such requirements.[134]

The section also provides that, after July 1, 2024, local governments may not amend their comprehensive plans, land use maps, zoning districts, or land development regulations in a manner that would conflict with a resiliency facility's classification as a permitted and allowable use.

Section 2 amends s. 286.29, F.S., regarding energy guidelines for public businesses. The bill deletes a provision relating to legislative intent and the following provisions:
- The Department of Management Services' (DMS's) Florida Climate-Friendly Preferred Products List;
- A requirement that state agencies contract only with hotels or conference facilities for meetings and conferences as recognized by the Green Lodging Program;
- A requirement that, when state agencies, state universities, community colleges, and local governments purchase vehicles under a state purchasing plan that such vehicles are selected for greatest fuel efficiency available for a given use class when fuel economy data is available.

The section also creates a new provision requiring the DMS, in consultation with the Florida Department of Commerce (FDC) and the Department of Agriculture and Consumer Services (DACS), to develop a Florida Humane Preferred Products List. In developing this list, the DMS must assess products currently available for purchase under state term contracts that contain or consist of an energy storage device with a capacity of greater than one kilowatt-hour or that contain or consist of an energy generation device with a capacity of greater than 500 watts. The

[132] Section 720.301(8), F.S.
[133] The section defines "resiliency facility" as "a facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster."
[134] Provided that such requirements are not more excessive than those applied to similar other uses.

DMS must then identify the specific products that appear to be largely made free from forced labor, irrespective of the age of the worker. The section defines "forced labor" as any work performed or service rendered that is:

- Obtained by intimidation, fraud, or coercion, including by threat of serious bodily harm to, or physical restraint against, a person, by means of a scheme intended to cause the person to believe that if he or she does not perform such labor or render such service, the person will suffer serious bodily harm or physical restraint, or by means of the abuse or threatened abuse of law or the legal process;
- Imposed on the basis of a characteristic that has been held by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability;
- Not performed or rendered voluntarily by a person; or
- In violation of the Child Labor Law[135] or otherwise performed or rendered through oppressive child labor.

State agencies and political subdivisions in the state must, when procuring such energy products from state term contracts, first consult the Florida Humane Preferred Energy Products List and may not purchase or procure products not included in the list.

Section 3 amends s. 366.032, F.S., to include "development districts" in a provision that states a municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by utilities, gas districts, natural gas transmission companies, and certain liquefied petroleum gas dealers, dispensers, and cylinder exchange operators.

The section also includes "development districts" in a provision that prohibits a municipality, county, special district, or other political subdivision of the state from restricting or prohibiting the use of an appliance using the fuels or energy types supplied by the energy and gas providers above.

Section 4 creates s. 366.042, F.S., relating to mutual aid agreements or electric cooperatives and municipal electric utilities. This section requires rural electric cooperatives[136] and municipal electric utilities to enter into and maintain, at least one of the following:

- A mutual aid agreement with a municipal electric utility;
- A mutual aid agreement with an electric cooperative;
- A mutual aid agreement with a public utility; or
- A pre-event agreement with a private contractor.

[135] Part I of ch. 450, F.S., provides the Child Labor Law for Florida.

[136] The bill uses the term "electric cooperatives;" however, the term used in ch. 366, F.S., to refer a cooperative organized and existing under the Rural Electric Cooperative Law is "rural electric cooperative." This section is written under the assumption that this was the type of entity that the section was intended to refer to.

Rural electric cooperatives and municipal utilities must submit, on an annual basis by May 15, to the Public Service Commission (PSC) an attestation that they have complied with the above requirement. This provision does not give the PSC jurisdiction over the terms or conditions of such agreements. By May 30 of each year, the PSC must compile these attestations and submit them to the Department of Emergency Management (DEM). If a rural electric cooperative or municipal utility does not comply with this requirement, they are not eligible to receive state financial assistance, if such funding is available, for power restoration efforts following a natural disaster that is subject to a state of emergency declared by the Governor. Until the time the attestation is submitted, nothing in this section prevents a rural electric cooperative or municipal electric utility from receiving federal funds. This section does not alter the PSC's jurisdiction over public or electric utilities.

Section 5 amends s. 366.94, F.S., to allow the PSC to approve, upon petition of a public utility, voluntary electric vehicle charging programs, to become effective on or after January 1, 2025, to include, but not be limited to, residential, fleet, and public electric vehicle charging. To be approved, the PSC must determine that the public utility's general body of ratepayers, as a whole, will not pay to support recovery of its electric vehicle charging investment by the end of the useful life of the assets dedicated to the electric vehicle charging service. The section also makes clear that it does not preclude cost recovery for electric vehicle charging programs approved by the PSC before January 1, 2024.

Section 6 creates s. 366.99, F.S., authorizing natural gas public utilities to petition[137] the PSC to annually recover prudently incurred natural gas facilities relocation costs[138] to accommodate requirements imposed by the Florida Department of Transportation (FDOT) and local government entities. The section allows each utility to recover such costs through a charge separate and apart from base rates, referred to in the section as the natural gas facilities relocation cost recovery clause.

The section directs the PSC to establish an annual proceeding to review these petitions. This review is limited to:

- Determining the prudence of the utility's actual incurred natural gas facilities relocation costs;
- Determining the reasonableness of the utility's projected natural gas facilities relocation costs for the next calendar year; and
- Providing for a true-up of the costs with the projections on which past factors were set.

Any refund or collection made pursuant to the true-up process must include applicable interest.

The section also requires all costs approved pursuant to this clause be allocated to customer classes pursuant to the rate design most recently approved by the PSC. If a capital expenditure is

[137] The petition should describe the utility's natural gas facilities relocation costs for the next calendar year, actual natural gas facilities relocation costs for the prior calendar year, and proposed cost-recovery factors designed to recover such costs. Proceeding with implementing a plan before filing this petition would not constitute imprudence on the part of the utility.
[138] Such costs would include, but not be limited to, the costs to relocate or reconstruct facilities as required by a mandate, a statute, a law, an ordinance, or an agreement between the utility and an authority, including, but not limited to, costs associated with reviewing plans provided by an authority. The costs would not include any costs recovered through base rates.

recoverable as a natural gas facilities relocation cost, the public utility may recover the annual depreciation on the cost, calculated at the public utility's current approved depreciation rates, and a return on the undepreciated balance of the costs at the public utility's weighted average cost of capital using the last approved return on equity.

The section directs the PSC to adopt rules to implement the section as soon as practicable.

Section 7 amends s. 377.601, F.S., to substantially revise the legislative intent as it pertains to part II, of ch. 377, F.S., which provides energy resource planning and development policies for Florida. It deletes the legislative intent section as described on page 20 of this analysis. As rewritten, the intent provides that the purpose of the state's energy policy is to ensure an adequate, reliable, and cost-effective supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth. The revised intent further states that governance of the state's energy policy be efficiently directed toward achieving this purpose.

For the purposes of the above, the revised section states that the state's energy policy should be guided by all of the following goals:

- Ensuring a cost-effective and affordable energy supply.
- Ensuring adequate supply and capacity.
- Ensuring a secure, resilient, and reliable energy supply, with an emphasis on a diverse supply of domestic energy resources.
- Protecting public safety.
- Protecting the state's natural resources, including its coastlines, tributaries, and waterways.
- Supporting economic growth.

In furtherance of the above goals, the rewritten section provides that it is state policy to:

- Promote the cost-effective development and effective use of a diverse supply of domestic energy resources in the state and discourage energy waste and deletes a provision on global climate change;
- Promote the cost-effective development and maintenance of energy infrastructure that is resilient to natural and manmade threats to the security and reliability of the state's energy supply and deletes programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions;
- Reduce reliance on foreign energy resources;
- Include energy reliability and security considerations in all state, regional, and local planning;
- Utilize and manage effectively energy resources used within state agencies;
- Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs;
- Include the full participation of citizens in the development and implementation of energy programs;
- Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible;
- Promote energy education and the public dissemination of information on energy and its impacts in relation to the goals stated above;

- Encourage the research, development, demonstration, and application of domestic energy resources, including the use of renewable energy resources;
- Consider, in its decision-making, the impacts of energy-related activities on the goals above, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized; and
- Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within the state Florida.

Section 8 amends s. 377.6015, F.S., to revise the duties of the DACS to conform to the changes made by the bill and require that the DACS advocate for energy issues consistent with the goals in proposed s. 377.601(2), F.S., provided in Section 7 of the bill.

Section 9 amends s. 377.703, F.S., to revise the duties of the DACS to conform to the changes made by the bill. It also eliminates a requirement that the DACS, when analyzing the energy data it collects and preparing long-range forecasts of energy supply and demand in coordination with the PSC (which is responsible for electricity and natural gas forecasts), that the forecasts contain plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas. Instead, such forecasts must contain an analysis of the extent to which domestic energy resources, including renewable energy sources, are being utilized in the state.

The section also deletes a requirement that the forecasts contain:
- Consideration of alternative scenarios of statewide energy supply and demand for five, 10, and 20 years to identify strategies for long-range action, including identification of potential social, economic, and environmental effects. Instead, such consideration must be made for potential impacts in relation to the goals in proposed s. 377.601(2), F.S., provided in Section 7 of the bill.
- An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated effects on the state's environment and social services resulting from energy resource development activities or from energy supply constraints, or both. Instead, such assessments must contain an analysis of anticipated impacts in relation to the goals in proposed s. 377.601(2), F.S., provided in Section 7 of the bill, resulting from energy resource development activities or from energy supply constraints, or both.

The section also revises the duties of the DACS as it relates to the promotion of the development and use of renewable energy sources. The section deletes a requirement that the DACS establish goals and strategies for increasing the use of renewable energy in the state.

Section 10 creates s. 377.708, F.S., to provide the following definitions in relation to wind energy:
- "Coastline" means the established line of mean high water.
- "Offshore wind energy facility" means any wind energy facility located on waters of this state, including other buildings, structures, vessels, or electrical transmission cabling to be sited on waters of this state, or connected to corresponding onshore substations that are used to support the operation of one or more wind turbines sited or constructed on waters of this

state and any submerged lands or territorial waters that are not under the jurisdiction of the state.

- “Real property” means land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably.
- "Waters of this state" means any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, canals and submerged lands under the jurisdiction of this state.
- "Wind energy facility" means an electrical wind generation facility or expansion thereof having at least a 400-watt rated capacity, including substations; meteorological data towers; aboveground, underground, and electrical transmission lines; and transformers, control systems, and other buildings or structures under common ownership or operating control used to support the operation of the facility the primary purpose of which is to offer electricity supply for sale.
- "Wind turbine" means a device or apparatus that has the capability to convert kinetic wind energy into rotational energy that drives an electrical generator consisting of a tower body and rotator with two or more blades. The term includes both horizontal and vertical axis turbines. The term does not include devices used to measure wind speed and direction, such as an anemometer.

The bill prohibits the construction, operation, or expansion of an offshore wind energy facility in Florida. The bill also prohibits the construction or operation of a wind turbine on real property within one mile of coastline, on waters of the state, and on any submerged lands. The bill authorizes the Department of Environmental Protection (DEP) to bring an action for injunctive relief against any person who owns, constructs, or operates an offshore wind energy facility or a wind turbine in violation of the provisions of the bill.

Under the bill, the DEP must review all applications for federal wind energy leases in the territorial waters of the United States adjacent to waters of Florida, and shall signify its approval or objection to each application.

Section 11 repeals the following sections:

- Sections 377.801-804, F.S., providing the Florida Energy and Climate Protection Act (Renewable Energy and Energy-Efficient Technologies Grants Program);
- Section 377.808, F.S., providing the Florida Green Governments Grant Act;
- Section 377.809, F.S., providing the Energy Economic Zone Pilot Program;
- Section 377.816, F.S., providing a program operated by Office of Energy within the DACS for allocating or reallocating the qualified energy conservation bond volume limitation provided by 26 U.S.C. s. 54D.

Section 12 provides for the programs deleted in Section 11 of the bill, there may not be:

- New or additional applications, certifications, or allocations approved.
- New letters of certification issued.
- New contracts or agreements executed.
- New awards made.

All certifications or allocations issued under such programs are rescinded except for the certifications of, or allocations to, those certified applicants or projects that continue to meet the applicable criteria in effect before July 1, 2024. Any existing contracts or agreements authorized under those programs must continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified. However, further modifications, extensions, or waivers may not be made or granted relating to those contracts or agreements, except computations by the Department of Revenue of the income generated by or arising out of a qualifying project.

Section 13 amends s. 220.193, F.S., regarding the Florida renewable energy production credit, to conform to changes made by the bill.

Section 14 amends s. 288.9606, F.S., relating to the issue of revenue bonds, to conform to changes made by the bill.

Section 15 amends s. 380.0651, F.S., relating to statewide guidelines, standards, and exemptions, to conform to changes made by the bill.

Section 16 amends s. 403.9405, F.S., to provide that the Natural Gas Transmission Pipeline Siting Act does not apply to natural gas transmission pipelines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification of that pipeline. The section increases the 15-mile limit for non-applicability to be 100 miles.

Section 17 amends s. 720.3075, F.S., which relates to prohibited clauses in homeowners' association documents. The section provides that homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to customers within the homeowners' association that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Category I liquefied petroleum gas dealers, category II liquefied petroleum gas dispensers, or category III liquefied petroleum gas cylinder exchange operators as defined in s. 527.01, F.S.

The section also prohibits association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the use of an appliance,[139] including a stove or grill,

[139] As used in this section, "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

which uses the types or fuel source of energy productions which may be used, delivered, converted, or supplied by the entities above.

Section 18 requires the PSC to conduct an assessment, in consultation with the DEM, of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. In regards to the cyber threat assessment, the PSC is to also consult with the Florida Digital Service. The section also directs all electric utilities, natural gas utilities, and natural gas pipelines in the state to cooperate with the PSC to provide access to all information necessary to conduct the assessment. The bill requires the PSC, by July 1, 2025, to submit a report of its assessment to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must also contain any recommendations for potential legislative or administrative actions that may enhance the physical security or cyber security of the state's electric grid or natural gas facilities.

Section 19 directs the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including small modular reactors (SMRs), to meet the state's electrical power needs, and research means to encourage and foster the installation and use of such technologies at military installations in the state in partnership with public utilities. In conducting this study, the PSC is to consult with the FDOT and the DEM. The PSC is to submit a report of its findings, along with any recommendations for potential legislative or administrative actions, to the Governor, President of the Senate, and Speaker of the House of Representatives by April 1, 2025. The findings and recommendations must be consistent with the goals proposed in s. 377.601(2), F.S., provided in Section 7 of the bill.

Section 20 directs the FDOT, in consultation with the Office of Energy within the DACS, to study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the state highway system. The FDOT is to submit a report of its findings, along with any recommendations for potential legislative or administrative actions, to the Governor, President of the Senate, and Speaker of the House of Representatives by April 1, 2025. The findings and recommendations must be consistent with the goals proposed in s. 377.601(2), F.S., provided in Section 7 of the bill.

Section 21 provides that the bill shall take effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 17 of the bill prohibits homeowners' associations, in their governing documents, from disallowing certain types or fuel sources of energy production and appliances that use such fuels in their governing documents. If this provision was to apply retroactively to existing homeowners' association documents, it may raise an issue under the contracts clause of Florida's Constitution.

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express such an intent for the statute to be valid.[140] When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

The Florida Supreme Court has acknowledged that "[t]he distinction between substantive and procedural law is neither simple nor certain."[141] The Court further acknowledged that its previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.[142]

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.[143] Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.[144]

Florida's contracts clause states that "no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."[145] Regarding the impairment of an existing contract by the retroactive application of a statute, the Florida Supreme Court recently said:

> "[V]irtually no degree of contract impairment is tolerable." However, we also recognized that the holding that "virtually" no impairment is tolerable

[140] *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).
[141] *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000).
[142] *Love*, *supra* note 141 at 184.
[143] *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).
[144] *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).
[145] FLA. CONST. art. I, s. 10.

> "necessarily implies that some impairment is tolerable." The question thus becomes how much impairment is tolerable and how to determine that amount. To answer that question, in *Pomponio* we proposed a balancing test that "allow[ed] the court to consider the actual effect of the provision on the contract and to balance a party's interest in not having the contract impaired against the State's source of authority and the evil sought to be remedied." "[T]his becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the State's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."

An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. However, where the impairment is severe, "[t]he severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected." There must be a "significant and legitimate public purpose behind the regulation."[146]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The following provisions of the bill may have a fiscal impact on the private sector:

- Deleting requirements relating to the Florida Climate-Friendly Preferred Products List may have a negative impact on companies that have products on that list as they may see a reduction in purchases of those products.
- The provision requiring state agencies and political subdivisions to consult a Florida Humane Preferred Products List when procuring certain energy products, may positively financially impact those companies with products on the list. Conversely, companies with products not on the list may be negatively financially impacted.
- The provisions reducing the applicability of the Natural Gas Transmission Pipeline Siting Act will likely reduce regulatory costs for pipeline projects.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on state government expenditures because it imposes new requirements for specified state agencies, which may require the expenditure of resources. The directives of the bill likely expands the responsibilities of the following state agencies:

- Department of Management Services – due to the development of a Florida Humane Preferred Energy Products List;

[146] *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1192 (Fla. 2017) (internal citations omitted for clarity).

- The Public Service Commission (PSC) – due to the assessment of the security and resiliency of the state's electric grid and natural gas facilities;
- PSC – due to the study and evaluation of advanced nuclear power technologies;
- The Department of Agriculture and Consumer Services (DACS) – due to revised duties of the DACS to conform to the changes made by the bill and require that the DACS advocate for energy issues consistent with the goals in proposed s. 377.601(2), F.S.;
- The Department of Environmental Protection – required to review all applications for federal wind energy leases in the territorial waters of the United States adjacent to Florida and signify its approval or objection to each application; and
- Florida Department of Transportation – due to the study and evaluation of potential development of hydrogen fueling infrastructure.

Most of the above agencies have not yet provided their analyses of this bill, so it is unknown at this time the extent to which the bill would impact those agencies' operations. Affected agencies may be able to satisfy all or some of these requirements with existing resources. For example, the DMS may incur additional workload for the development of the Florida Humane Preferred Energy Products Lists; however, according the DMS, such workload can be absorbed within the current resources of the DMS. The impact of requiring state agencies to purchase certain energy-related items from a new Florida Humane Preferred Energy Products List, as required by the bill, is indeterminate.

The PSC, in its analysis of SB 1548, stated that implementing a similar provision in that bill to Section 19 of this bill (directing the PSC to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including small modular reactors) would likely require the PSC to secure outside experts because the "technology is in its infancy, and no such reactors have been put into operation either in Florida or elsewhere." The PSC provided an estimated cost of such services of $190,000, based on the inflation-adjusted cost of consultants it has hired for a previous research project.[147] Historically, traditional studies cost approximately $200,000 to $300,000.

VI. Technical Deficiencies:

Section 4 of the bill uses the term "electric cooperatives;" however, the terminology used in ch. 366, F.S. to refer to a cooperative organized and existing under the Rural Electric Cooperative Law is "rural electric cooperative."

VII. Related Issues:

Section 3 of the bill uses the term "development district," but does not define this term. It is unclear if this is intended to mean a community development district or another entity. The sponsor may wish to revise this term or include a definition.

Section 4 of the bill does not define the term "mutual aid agreement" or "pre-event agreement" and these terms are not used elsewhere in ch. 366, F.S. The sponsor may wish to provide a

[147] Florida Public Service Commission, *Bill Analysis for SB 1548*, *supra* note 28.

definition or requirement of what constitutes such an agreement. Also, as described in the Present Situation portion of this analysis, municipal electric utilities and rural electric cooperatives generally enter into a mutual aid network and not individual agreements with other utilities. Section 4 may not contemplate that such agreements would qualify under the requirements.

Section 10 of the bill requires the Department of Environmental Protection to "review all applications for federal wind energy leases in the territorial waters of the United States adjacent to waters of this state and shall signify its approval of or objection to each application." The section also does not provide on which basis the DEP is to review applications. In addition, under current federal regulations, wind energy leases are generally granted by a competitive bidding process under 30 C.F.R. 585.210-216, managed by the Bureau of Ocean Energy Management (BOEM). There is also a process for non-competitive leases when there is no competitive interest in a proposed area. Under 30 C.F.R. 580.211, state participation is contemplated when identifying areas for consideration to be leased and, once BOEM issues a proposed sale notice before an auction sale, an affected state is notified and there is a 60 day comment period.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 286.29, 366.032, 366.94, 377.601, 377.6015, 377.703, 220.193, 288.9606, 380.0651, 403.9405, and 720.3075.

This bill creates the following section of the Florida Statutes: 163.3210, 366.042, 366.99, 377.708 and several undesignated sections of law.

This bill repeals the following sections of the Florida Statutes: 377.801, 377.802, 377.803, 377.804, 377.808, 377.809, and 377.816.

IX. Additional Information:

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

CS by Appropriations Committee on Agriculture, Environment, and General Government on February 20, 2024
The committee substitute:

- Regarding the Florida Humane Preferred Products List, revises the capacity of energy storage devices and energy generation devices that qualify for the provision requirements in the bill.
- Deletes a provision prohibiting the Florida Department of Transportation (FDOT) from assigning or transferring its permitting rights across any transportation right-of-way operated by the FDOT to a third party or governmental entity that does not operate the transportation right-of-way without prior approval of the Legislature.
- Deletes a provision prohibiting the FDOT and local government entities from requiring a utility within a public road operated by the authority to be relocated on behalf of any other third-party or governmental agency project related to a separate public or private road or transportation corridor.

- Deletes a provision requiring the Public Service Commission (PSC) to create targeted storm reserve amounts for public utilities.
- Creates a provision requiring all electric cooperatives and municipal electric utilities to enter into and maintain certain mutual aid agreements and submit an annual attestation to qualify to receive state financial assistance for disaster recovery.
- Deletes a provision authorizing the PSC to establish an experimental mechanism to facilitate energy infrastructure investment.
- Revises a provision permitting the PSC to approve voluntary public utility programs for residential, customer-specific electric vehicle (EV) charging to amend the types of vehicles eligible for the programs and deletes requirements that an EV charging program may not adversely impact ratepayers and that revenue from a program must be credited to ratepayers. The amendment also adds a requirement that ratepayers will not pay to support the recovery of EV charging investments.
- Regarding a provision in the bill revising legislative intent regarding energy resource planning and development policies for Florida, the amendment adds cost-effectiveness. The amendment also deletes "ensuring consumer choice" from the updated energy policy goals and adds "reliability and security" to state policies.
- Deletes a requirement in s. 377.703, F.S., that the Department of Agriculture and Consumer Services to establish goals and strategies for increasing the use of renewable energy.
- Creates a provision prohibiting:
  - The construction, operation, or expansion of an offshore wind energy facility in the state;
  - Construction or operation of wind turbine within 1 mile of the state coastline; and
  - Construction or operation of a wind turbine in state waters or submerged lands.
- Creates a provision requiring the Department of Environmental Protection (DEP) to review federal wind energy lease applications and signify DEP's approval or objection.
- Deletes a provision in the bill directing the Florida Department of Commerce to expand eligibility for the Low-Income Energy Assistance Program (LIHEAP) to persons in certain federal disability programs and develop a process for automated LIHEAP payments to home energy suppliers.
- Extends due dates for certain reports that the bill requires the PSC and DOT to submit.
- Creates new consultation requirements for provisions in the bill requiring the PSC to assess the state's electric grid and study small modular reactors.
- Makes technical and conforming changes..

CS by Regulated Industries on January 30, 2024:
The committee substitute:

- Adds a provision prohibiting the Florida Department of Transportation (FDOT) from assigning or transferring its permitting rights across any transportation right-of-way operated by the FDOT to a third party or governmental entity that does not operate the transportation right-of-way without prior approval of the Legislature.
- Adds a provision prohibiting the FDOT and local government entities from requiring a utility within a public road operated by the authority to be relocated on behalf of

any other third-party or governmental agency project related to a separate public or private road or transportation corridor.
- Deletes a provision in the bill that created an electric vehicle battery deposit program within the Department of Highway Safety and Motor Vehicles and a related report.
- Deletes a provision in the bill that required the FDOT, when it enters a contract or has entered into a contract or license to allow a vendor to sell motor fuel or charging services along the turnpike system, offer access to potential vendors of other motor vehicle fuels or repowering services along the turnpike system.
- Deletes a provision in the bill that created a requirement that, before a public utility retires an electrical power plant, it must petition the Public Service Commission (PSC) for approval.
- Adds a provision requiring the PSC to create targeted storm reserve amounts for public utilities.
- Adds a provision authorizing the PSC to establish an experimental mechanism to facilitate energy infrastructure investment.
- Regarding a provision in the bill permitting the PSC to approve voluntary public utility programs for residential, customer-specific electric vehicle charging, it revises the applicability date for previously approved programs.
- Adds a provision requiring the PSC to conduct an annual proceeding to determine prudently incurred natural gas facilities relocation costs for cost recovery by natural gas public utilities.
- Adds a provision directing the Florida Department of Commerce (FDC) to expand eligibility for the Low-Income Energy Assistance Program (LIHEAP) to persons in certain federal disability programs.
- Adds a provision directing the FDC to develop a process for automated LIHEAP payments to home energy suppliers.
- Deletes a provision that directs the PSC to ensure technologies that allow businesses and consumers to use electrical energy for their own use are used in a way that best maintains the integrity of the state electricity grid. The deleted provision also required the PSC to establish programs and rate mechanisms, and submit a report to the legislature.
- Makes technical and conforming changes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2024	.	
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	.	

The Committee on Fiscal Policy (DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Between lines 388 and 389
insert:

Section 5. Subsection (3) is added to section 366.075, Florida Statutes, to read:

366.075 Experimental and transitional rates; experimental mechanisms.—

(3) The commission may establish an experimental mechanism to facilitate energy infrastructure investment in gas consistent

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with the structure set forth in s. 366.96(7) and (8) and the intent of s. 366.91(1). Such gas infrastructure investment may include only investments that collect, prepare, clean, process, transport, or inject gas, which has the same meaning as the definition provided in s. 366.91(2)(f), for pipeline distribution. The commission shall have discretion to determine whether such mechanism is conducted in an annual proceeding. The commission shall adopt rules to implement and administer this subsection and shall propose such rules for adoption as soon as practicable but no later than January 1, 2025.

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

And the title is amended as follows:

Delete line 58

and insert:

submitted; providing construction; amending s. 366.075, F.S.; authorizing the commission to establish an experimental mechanism that meets certain requirements to facilitate certain energy infrastructure investment in gas; providing requirements for gas infrastructure investments; authorizing the commission to make certain determinations regarding the experimental mechanism; requiring the commission to adopt rules and propose such rules by a specified date; amending s. 366.94,

By the Appropriations Committee on Agriculture, Environment, and General Government; the Committee on Regulated Industries; and Senator Collins

601-03513-24 20241624c2

A bill to be entitled

An act relating to energy resources; creating s. 163.3210, F.S.; providing legislative intent; defining terms; providing that resilience facilities are a permitted use in certain land use categories in local government comprehensive plans and specified districts if certain criteria are met; authorizing local governments to adopt ordinances specifying certain requirements for resiliency facilities if such ordinances meet certain requirements; prohibiting amendments after a specified date to a local government's comprehensive plan, land use map, zoning districts, or land development regulations if such amendments would conflict with resiliency facility classification; amending s. 286.29, F.S.; revising energy guidelines for public businesses; eliminating the requirement that the Department of Management Services develop and maintain the Florida Climate-Friendly Preferred Products List; deleting the requirement that state agencies contract for meeting and conference space only with facilities that have a Green Lodging designations; deleting the requirement that state agencies, state universities, community colleges, and local governments that procure new vehicles under a state purchasing plan select certain vehicles under a specified circumstance; requiring the Department of Management Services to develop a Florida Humane Preferred Energy Products List in consultation with the Department of Commerce and the Department of

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601-03513-24 20241624c2

Agriculture and Consumer Services; providing assessment requirements developing the list; defining the term "forced labor"; requiring state agencies and political subdivisions that procure energy products from state term contracts to consult the list and purchase or procure such products; prohibiting state agencies and political subdivisions from purchasing or procuring products not included on the list; amending s. 366.032, F.S.; including development districts as a type of political subdivision for purposes of preemption over utility service restrictions; creating s. 366.042, F.S.; requiring electric cooperatives and municipal electric utilities to enter into and maintain at least one mutual aid agreement or pre-event agreement with certain entities for purposes of restoring power after a natural disaster; requiring electric cooperatives and municipal electric utilities to annually submit attestations of compliance to the Public Service Commission; requiring the commission to compile the attestations and annually submit a copy of such attestations to the Division of Emergency Management; providing that the submission of such attestations makes electric cooperatives and municipal electric utilities eligible to receive state financial assistance; providing that electric cooperatives and municipal electric utilities that do not submit such attestations are not eligible to receive state financial assistance until such attestations are submitted; providing construction; amending s. 366.94,

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

F.S.; removing terminology; authorizing the commission to approve voluntary electric vehicle charging programs upon petition of a public utility, to become effective on or after a specified date, if certain requirements are met; providing applicability; creating s. 366.99, F.S.; defining terms; authorizing public utilities to submit to the commission a petition for a proposed cost recovery for certain natural gas facilities relocation costs; requiring the commission to conduct annual proceedings to determine each utility's prudently incurred natural gas facilities relocation costs and to allow for the recovery of such costs; providing requirements for the commission's review; providing requirements for the allocation of such recovered costs; requiring the commission to adopt rules; providing a timeframe for such rulemaking; amending s. 377.601, F.S.; revising legislative intent; amending s. 377.6015, F.S.; revising the powers and duties of the Department of Agriculture and Consumer Services; conforming provisions to changes made by the act; amending s. 377.703, F.S.; revising additional functions of the department relating to energy resources; conforming provisions to changes made by the act; creating s. 377.708, F.S.; defining terms; prohibiting the construction, operation, or expansion of certain wind energy facilities and wind turbines in this state; requiring the Department of Environmental Protection to review applications for federal wind energy leases

in territorial waters of the United States adjacent to waters of this state and signify its approval or objection to such applications; authorizing the department to seek injunctive relief for violations; repealing ss. 377.801, 377.802, 377.803, 377.804, 377.808, 377.809, and 377.816, F.S., relating to the Florida Energy and Climate Protection Act, the purpose of the act, definitions under the act, the Renewable Energy and Energy-Efficient Technologies Grants Program, the Florida Green Government Grants Act, the Energy Economic Zone Pilot Program, and the Qualified Energy Conservation Bond Allocation Program, respectively; prohibiting the approval of new or additional applications, certifications, or allocations under such programs; prohibiting new contracts, agreements, and awards under such programs; rescinding all certifications or allocations issued under such programs; providing an exception; providing applicability relating to existing contracts or agreements under such programs; amending ss. 220.193, 288.9606, and 380.0651, F.S.; conforming provisions to changes made by the act; amending s. 403.9405, F.S.; revising the applicability of the Natural Gas Transmission Pipeline Siting Act; amending s. 720.3075, F.S.; prohibiting certain homeowners' association documents from precluding certain types or fuel sources of energy production and the use of certain appliances; defining the term "appliance"; requiring the commission to conduct an assessment of

the security and resiliency of the state's electric grid and natural gas facilities against physical threats and cyber threats; requiring the commission to consult with the Division of Emergency Management and the Florida Digital Service; requiring cooperation from all operating facilities in the state relating to such assessment; requiring the commission to submit by a specified date a report of such assessment to the Governor and the Legislature; providing additional content requirements for such report; requiring the commission to study and evaluate the technical and economic feasibility of using advanced nuclear power technologies to meet the electrical power needs of this state; requiring the commission to research means to encourage and foster the installation and use of such technologies at military installations in partnership with public utilities; requiring the commission to consult with the Department of Environmental Protection and the Division of Emergency Management; requiring the commission to submit by a specified date a report to the Governor and the Legislature which contains its findings and any additional recommendations for potential legislative or administrative actions; requiring the Department of Transportation, in consultation with the Office of Energy within the Department of Agriculture and Consumer Services, to study and evaluate the potential development of hydrogen fueling infrastructure to support hydrogen-powered vehicles; requiring the

Department of Transportation to submit by a specified date a report to the Governor and the Legislature which contains its findings and recommendations for legislative or administrative actions that may accommodate the future development of hydrogen fueling infrastructure; providing an effective date.

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

Section 1. Section 163.3210, Florida Statutes, is created to read:

163.3210 Natural gas resiliency and reliability infrastructure.—

(1) It is the intent of the Legislature to maintain, encourage, and ensure adequate and reliable fuel sources for public utilities. The resiliency and reliability of fuel sources for public utilities is critical to the state's economy; the ability of the state to recover from natural disasters; and the health, safety, welfare, and quality of life of the residents of the state.

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

(a) "Natural gas" means all forms of fuel commonly or commercially known or sold as natural gas, including compressed natural gas and liquefied natural gas.

(b) "Natural gas reserve" means a facility that is capable of storing and transporting and, when operational, actively stores and transports a supply of natural gas.

(c) "Public utility" has the same meaning as defined in s. 366.02.

(d) "Resiliency facility" means a facility owned and operated by a public utility for the purposes of assembling, creating, holding, securing, or deploying natural gas reserves for temporary use during a system outage or natural disaster.

(3) A resiliency facility is a permitted use in all commercial, industrial, and manufacturing land use categories in a local government comprehensive plan and all commercial, industrial, and manufacturing districts. A resiliency facility must comply with the setback and landscape criteria for other similar uses. A local government may adopt an ordinance specifying buffer and landscaping requirements for resiliency facilities, provided such requirements do not exceed the requirements for similar uses involving the construction of other facilities that are permitted uses in commercial, industrial, and manufacturing land use categories and zoning districts.

(4) After July 1, 2024, a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with a resiliency facility's classification as a permitted and allowable use, including, but not limited to, an amendment that causes a resiliency facility to be a nonconforming use, structure, or development.

Section 2. Section 286.29, Florida Statutes, is amended to read:

286.29 Energy guidelines for ~~Climate-friendly~~ public business. ~~The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas emissions of state government~~

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~~operations. The following shall pertain to all state agencies when conducting public business:~~

~~(1) The Department of Management Services shall develop the "Florida Climate-Friendly Preferred Products List." In maintaining that list, the department, in consultation with the Department of Environmental Protection, shall continually assess products currently available for purchase under state term contracts to identify specific products and vendors that offer clear energy efficiency or other environmental benefits over competing products. When procuring products from state term contracts, state agencies shall first consult the Florida Climate-Friendly Preferred Products List and procure such products if the price is comparable.~~

~~(2) State agencies shall contract for meeting and conference space only with hotels or conference facilities that have received the "Green Lodging" designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, unless the responsible state agency head makes a determination that no other viable alternative exists.~~

(1) ~~(3)~~ Each state agency shall ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption, which include:

(a) Ensuring appropriate tire pressures and tread depth.~~;~~

(b) Replacing fuel filters and emission filters at recommended intervals.~~;~~

(c) Using proper motor oils.~~; and~~

(d) Performing timely motor maintenance.

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

Each state agency shall measure and report compliance to the Department of Management Services through the Equipment Management Information System database.

~~(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which of the following use classes for which the vehicle is being procured:~~

~~(a) State business travel, designated operator;~~

~~(b) State business travel, pool operators;~~

~~(c) Construction, agricultural, or maintenance work;~~

~~(d) Conveyance of passengers;~~

~~(e) Conveyance of building or maintenance materials and supplies;~~

~~(f) Off-road vehicle, motorcycle, or all-terrain vehicle;~~

~~(g) Emergency response; or~~

~~(h) Other.~~

~~Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected for the greatest fuel efficiency available for a given use class when fuel economy data are available. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any~~

~~exceptional performance characteristics denoted as a part of the procurement process prior to purchase.~~

(2)~~(5)~~ All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.

(3)(a) The Department of Management Services shall, in consultation with the Department of Commerce and the Department of Agriculture and Consumer Services, develop a Florida Humane Preferred Energy Products List. In developing the list, the department must assess products currently available for purchase under state term contracts that contain or consist of an energy storage device with a capacity of greater than one kilowatt-hour or that contain or consist of an energy generation device with a capacity of greater than 500 watts and identify specific products that appear to be largely made free from forced labor, irrespective of the age of the worker. For purposes of this subsection, the term "forced labor" means any work performed or service rendered that is:

1. Obtained by intimidation, fraud, or coercion, including by threat of serious bodily harm to, or physical restraint against, a person, by means of a scheme intended to cause the person to believe that if he or she does not perform such labor or render such service, the person will suffer serious bodily harm or physical restraint, or by means of the abuse or threatened abuse of law or the legal process;

2. Imposed on the basis of a characteristic that has been held by the United States Supreme Court or the Florida Supreme

Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability;

3. Not performed or rendered voluntarily by a person; or

4. In violation of the Child Labor Law or otherwise performed or rendered through oppressive child labor.

(b) When procuring the types of energy products described in paragraph (a) from state term contracts, state agencies and political subdivisions shall first consult the Florida Humane Preferred Energy Products List and may not purchase or procure products not included in the list.

Section 3. Subsections (1), (2), and (5) of section 366.032, Florida Statutes, are amended to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, development district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that such entities are authorized to serve:

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s.

368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) Except to the extent necessary to enforce the Florida Building Code adopted pursuant to s. 553.73 or the Florida Fire Prevention Code adopted pursuant to s. 633.202, a municipality, county, special district, development district, or other political subdivision of the state may not enact or enforce a resolution, an ordinance, a rule, a code, or a policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in subsection (1). As used in this subsection, the term "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

(5) Any municipality, county, special district, development district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that is preempted by this act that existed before or on July 1, 2021, is void.

Section 4. Section 366.042, Florida Statutes, is created to read:

366.042 Mutual aid agreements of electric cooperatives and municipal electric utilities.—

(1) For the purposes of restoring power following a natural

disaster that is subject to a state of emergency declared by the Governor, all electric cooperatives and municipal electric utilities shall enter into and maintain, at a minimum, one of the following:

(a) A mutual aid agreement with a municipal electric utility;

(b) A mutual aid agreement with an electric cooperative;

(c) A mutual aid agreement with a public utility; or

(d) A pre-event agreement with a private contractor.

(2) All electric cooperatives and municipal electric utilities operating in this state shall annually submit to the commission an attestation, in conformity with s. 92.525, stating that the organization has complied with the requirements of this section on or before May 15. Nothing in this section shall be construed to give the commission jurisdiction over the terms and conditions of a mutual aid agreement or agreement with a private contractor entered into by an electric cooperative or a municipal electric utility.

(3) The commission shall compile the attestations and annually submit a copy to the Division of Emergency Management no later than May 30.

(4) An electric cooperative or municipal electric utility that submits the attestation required by this section is eligible to receive state financial assistance, if such funding is available, for power restoration efforts following a natural disaster that is subject to a state of emergency declared by the Governor.

(5) An electric cooperative or municipal electric utility that does not submit an attestation required by this section is

ineligible to receive state financial assistance for power restoration efforts following a natural disaster that is subject to a state of emergency declared by the Governor, until such time as the attestation is submitted.

(6) Nothing in this section shall be construed to prohibit, limit, or disqualify an electric cooperative or municipal electric utility from receiving funding under The Stafford Act, 42 U.S.C. 5121 et seq., or any other federal program, including programs administered by the state.

(7) This section does not expand or alter the jurisdiction of the commission over public utilities or electric utilities.

Section 5. Subsection (4) is added to section 366.94, Florida Statutes, to read:

366.94 Electric vehicle charging ~~stations~~.—

(4) Upon petition of a public utility, the commission may approve voluntary electric vehicle charging programs to become effective on or after January 1, 2025, to include, but not be limited to, residential, fleet, and public electric vehicle charging, upon a determination by the commission that the utility's general body of ratepayers, as a whole, will not pay to support recovery of its electric vehicle charging investment by the end of the useful life of the assets dedicated to the electric vehicle charging service. This provision does not preclude cost recovery for electric vehicle charging programs approved by the commission before January 1, 2024.

Section 6. Section 366.99, Florida Statutes, is created to read:

366.99 Natural gas facilities relocation costs.—

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

(a) "Authority" has the same meaning as in s. 337.401(1)(a).

(b) "Facilities relocation" means the physical moving, modification, or reconstruction of public utility facilities to accommodate the requirements imposed by an authority.

(c) "Natural gas facilities" or "facilities" means gas mains, laterals, and service lines used to distribute natural gas to customers. The term includes all ancillary equipment needed for safe operations, including, but not limited to, regulating stations, meters, other measuring devices, regulators, and pressure monitoring equipment.

(d) "Natural gas facilities relocation costs" means the costs to relocate or reconstruct facilities as required by a mandate, a statute, a law, an ordinance, or an agreement between the utility and an authority, including, but not limited to, costs associated with reviewing plans provided by an authority. The term does not include any costs recovered through the public utility's base rates.

(e) "Public utility" or "utility" has the same meaning as in s. 366.02, except that the term does not include an electric utility.

(2) A utility may submit to the commission, pursuant to commission rule, a petition describing the utility's projected natural gas facilities relocation costs for the next calendar year, actual natural gas facilities relocation costs for the prior calendar year, and proposed cost-recovery factors designed to recover such costs. A utility's decision to proceed with implementing a plan before filing such a petition does not constitute imprudence.

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(3) The commission shall conduct an annual proceeding to determine each utility's prudently incurred natural gas facilities relocation costs and to allow each utility to recover such costs through a charge separate and apart from base rates, to be referred to as the natural gas facilities relocation cost recovery clause. The commission's review in the proceeding is limited to determining the prudence of the utility's actual incurred natural gas facilities relocation costs and the reasonableness of the utility's projected natural gas facilities relocation costs for the following calendar year; and providing for a true-up of the costs with the projections on which past factors were set. The commission shall require that any refund or collection made as a part of the true-up process includes interest.

(4) All costs approved for recovery through the natural gas facilities relocation cost recovery clause must be allocated to customer classes pursuant to the rate design most recently approved by the commission.

(5) If a capital expenditure is recoverable as a natural gas facilities relocation cost, the public utility may recover the annual depreciation on the cost, calculated at the public utility's current approved depreciation rates, and a return on the undepreciated balance of the costs at the public utility's weighted average cost of capital using the last approved return on equity.

(6) The commission shall adopt rules to implement and administer this section and shall propose a rule for adoption as soon as practicable after July 1, 2024.

Section 7. Section 377.601, Florida Statutes, is amended to

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

read:

377.601 Legislative intent.—

(1) The purpose of the state's energy policy is to ensure an adequate, reliable, and cost-effective supply of energy for the state in a manner that promotes the health and welfare of the public and economic growth. The Legislature intends that governance of the state's energy policy be efficiently directed toward achieving this purpose ~~The Legislature finds that the state's energy security can be increased by lessening dependence on foreign oil; that the impacts of global climate change can be reduced through the reduction of greenhouse gas emissions; and that the implementation of alternative energy technologies can be a source of new jobs and employment opportunities for many Floridians. The Legislature further finds that the state is positioned at the front line against potential impacts of global climate change. Human and economic costs of those impacts can be averted by global actions and, where necessary, adapted to by a concerted effort to make Florida's communities more resilient and less vulnerable to these impacts. In focusing the government's policy and efforts to benefit and protect our state, its citizens, and its resources, the Legislature believes that a single government entity with a specific focus on energy and climate change is both desirable and advantageous. Further, the Legislature finds that energy infrastructure provides the foundation for secure and reliable access to the energy supplies and services on which Florida depends. Therefore, there is significant value to Florida consumers that comes from investment in Florida's energy infrastructure that increases system reliability, enhances energy independence and~~

~~diversification, stabilizes energy costs, and reduces greenhouse gas emissions.~~

(2) For the purposes of subsection (1), the state's energy policy must be guided by the following goals:

(a) Ensuring a cost-effective and affordable energy supply.

(b) Ensuring adequate supply and capacity.

(c) Ensuring a secure, resilient, and reliable energy supply, with an emphasis on a diverse supply of domestic energy resources.

(d) Protecting public safety.

(e) Protecting the state's natural resources, including its coastlines, tributaries, and waterways.

(f) Supporting economic growth.

(3) ~~(2)~~ In furtherance of the goals in subsection (2), it is the policy of the state ~~of Florida~~ to:

(a) ~~Develop and~~ Promote the cost-effective development and ~~effective~~ use of a diverse supply of domestic energy resources in the state and~~,~~ discourage ~~all forms of~~ energy waste~~, and recognize and address the potential of global climate change wherever possible~~.

(b) Promote the cost-effective development and maintenance of energy infrastructure that is resilient to natural and manmade threats to the security and reliability of the state's energy supply ~~Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation, energy security, and the reduction of greenhouse gas emissions~~.

(c) Reduce reliance on foreign energy resources.

(d) ~~(c)~~ Include energy reliability and security

considerations in all state, regional, and local planning.

(e) ~~(d)~~ Utilize and manage effectively energy resources used within state agencies.

(f) ~~(e)~~ Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.

(g) ~~(f)~~ Include the full participation of citizens in the development and implementation of energy programs.

(h) ~~(g)~~ Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses, and reduce those needs whenever possible.

(i) ~~(h)~~ Promote energy education and the public dissemination of information on energy and its impacts in relation to the goals in subsection (2) ~~environmental, economic, and social impact~~.

(j) ~~(i)~~ Encourage the research, development, demonstration, and application of domestic energy resources, including the use of ~~alternative energy resources, particularly~~ renewable energy resources.

(k) ~~(j)~~ Consider, in its decisionmaking, the impacts of energy-related activities on the goals in subsection (2) ~~social, economic, and environmental impacts of energy-related activities~~, including the whole-life-cycle impacts of any potential energy use choices, so that detrimental effects of these activities are understood and minimized.

(l) ~~(k)~~ Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within this state ~~Florida~~.

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

Section 8. Subsection (2) of section 377.6015, Florida Statutes, is amended to read:

377.6015 Department of Agriculture and Consumer Services; powers and duties.—

(2) The department shall:

~~(a) Administer the Florida Renewable Energy and Energy-Efficient Technologies Grants Program pursuant to s. 377.804 to assure a robust grant portfolio.~~

(a) ~~(b)~~ Develop policy for requiring grantees to provide royalty-sharing or licensing agreements with state government for commercialized products developed under a state grant.

~~(c) Administer the Florida Green Government Grants Act pursuant to s. 377.808 and set annual priorities for grants.~~

(b) ~~(d)~~ Administer the information gathering and reporting functions pursuant to ss. 377.601-377.608.

~~(e) Administer the provisions of the Florida Energy and Climate Protection Act pursuant to ss. 377.801-377.804~~.

(c) ~~(f)~~ Advocate for energy ~~and climate change~~ issues consistent with the goals in s. 377.601(2) and provide educational outreach and technical assistance in cooperation with the state's academic institutions.

(d) ~~(g)~~ Be a party in the proceedings to adopt goals and submit comments to the Public Service Commission pursuant to s. 366.82.

(e) ~~(h)~~ Adopt rules pursuant to chapter 120 in order to implement all powers and duties described in this section.

Section 9. Subsection (1) and paragraphs (e), (f), (h), and (m) of subsection (2) of section 377.703, Florida Statutes, are amended to read:

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

377.703 Additional functions of the Department of Agriculture and Consumer Services.—

(1) LEGISLATIVE INTENT.—Recognizing that energy supply and demand questions have become a major area of concern to the state which must be dealt with by effective and well-coordinated state action, it is the intent of the Legislature to promote the efficient, effective, and economical management of energy problems, centralize energy coordination responsibilities, pinpoint responsibility for conducting energy programs, and ensure the accountability of state agencies for the implementation of s. 377.601 ~~s. 377.601(2)~~, the state energy policy. It is the specific intent of the Legislature that nothing in this act shall in any way change the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, part II of chapter 403, or the powers, duties, and responsibilities of the Florida Public Service Commission.

(2) DUTIES.—The department shall perform the following functions, unless as otherwise provided, consistent with the development of a state energy policy:

(e) The department shall analyze energy data collected and prepare long-range forecasts of energy supply and demand in coordination with the Florida Public Service Commission, which is responsible for electricity and natural gas forecasts. To this end, the forecasts shall contain:

1. An analysis of the relationship of state economic growth and development to energy supply and demand, including the constraints to economic growth resulting from energy supply constraints.

2. ~~Plans for the development of renewable energy resources~~

~~and reduction in dependence on depletable energy resources, particularly oil and natural gas, and~~ An analysis of the extent to which domestic energy resources, including renewable energy sources, are being utilized in this ~~the~~ state.

3. Consideration of alternative scenarios of statewide energy supply and demand for 5, 10, and 20 years to identify strategies for long-range action, including identification of potential impacts in relation to the goals in s. 377.601(2) ~~social, economic, and environmental effects~~.

4. An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated impacts in relation to the goals in s. 377.601(2) ~~effects on the state's environment and social services~~ resulting from energy resource development activities or from energy supply constraints, or both.

(f) The department shall submit an annual report to the Governor and the Legislature reflecting its activities and making recommendations for policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state. The report must include a report from the Florida Public Service Commission on electricity and natural gas and information on energy conservation programs conducted and underway in the past year and include recommendations for energy efficiency and conservation programs for the state, including:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy efficiency and conservation.

3. Development and conduct of educational and training programs relating to energy efficiency and conservation.

4. An analysis of the ways in which state agencies are seeking to implement s. 377.601 ~~s. 377.601(2)~~, the state energy policy, and recommendations for better fulfilling this policy.

(h) The department shall promote the development and use of renewable energy resources, in conformance with chapter 187 and s. 377.601, by:

~~1. Establishing goals and strategies for increasing the use of renewable energy in this state.~~

1.~~2.~~ Aiding and promoting the commercialization of renewable energy resources, in cooperation with the Florida Energy Systems Consortium; the Florida Solar Energy Center; and any other federal, state, or local governmental agency that may seek to promote research, development, and the demonstration of renewable energy equipment and technology.

2.~~3.~~ Identifying barriers to greater use of renewable energy resources in this state, and developing specific recommendations for overcoming identified barriers, with findings and recommendations to be submitted annually in the report to the Governor and Legislature required under paragraph (f).

3.~~4.~~ In cooperation with the Department of Environmental Protection, the Department of Transportation, the Department of Commerce, the Florida Energy Systems Consortium, the Florida Solar Energy Center, and the Florida Solar Energy Industries Association, investigating opportunities, pursuant to the

national Energy Policy Act of 1992, the Housing and Community Development Act of 1992, and any subsequent federal legislation, for renewable energy resources, electric vehicles, and other renewable energy manufacturing, distribution, installation, and financing efforts that enhance this state's position as the leader in renewable energy research, development, and use.

4.~~5.~~ Undertaking other initiatives to advance the development and use of renewable energy resources in this state.

In the exercise of its responsibilities under this paragraph, the department shall seek the assistance of the renewable energy industry in this state and other interested parties and may enter into contracts, retain professional consulting services, and expend funds appropriated by the Legislature for such purposes.

(m) In recognition of the devastation to the economy of this state and the dangers to the health and welfare of residents of this state caused by severe hurricanes, and the potential for such impacts caused by other natural disasters, the Division of Emergency Management shall include in its energy emergency contingency plan and provide to the Florida Building Commission for inclusion in the Florida Energy Efficiency Code for Building Construction specific provisions to facilitate the use of cost-effective ~~solar~~ energy technologies as emergency remedial and preventive measures for providing electric power, street lighting, and water heating service in the event of electric power outages.

Section 10. Section 377.708, Florida Statutes, is created to read:

377.708 Wind energy.—

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

(a) "Coastline" means the established line of mean high water.

(b) "Department" means the Department of Environmental Protection.

(c) "Offshore wind energy facility" means any wind energy facility located on waters of this state, including other buildings, structures, vessels, or electrical transmission cabling to be sited on waters of this state, or connected to corresponding onshore substations that are used to support the operation of one or more wind turbines sited or constructed on waters of this state and any submerged lands or territorial waters that are not under the jurisdiction of the state.

(d) "Real property" has the same meaning as provided in s. 192.001(12).

(e) "Waters of this state" has the same meaning as in s. 327.02, except the term also includes all state submerged lands.

(f) "Wind energy facility" means an electrical wind generation facility or expansion thereof having at least a 400-watt rated capacity, including substations; meteorological data towers; aboveground, underground, and electrical transmission lines; and transformers, control systems, and other buildings or structures under common ownership or operating control used to support the operation of the facility the primary purpose of which is to offer electricity supply for sale.

(g) "Wind turbine" means a device or apparatus that has the capability to convert kinetic wind energy into rotational energy that drives an electrical generator consisting of a tower body

and rotator with two or more blades. The term includes both horizontal and vertical axis turbines. The term does not include devices used to measure wind speed and direction, such as an anemometer.

(2) PROHIBITED ACTIVITIES.—

(a) The construction, operation, or expansion of an offshore wind energy facility in this state is prohibited.

(b) The construction or operation of a wind turbine on real property within 1 mile of coastline in this state is prohibited.

(c) The construction or operation of a wind turbine on waters of this state and any submerged lands is prohibited.

(3) REVIEW.—The department shall review all applications for federal wind energy leases in the territorial waters of the United States adjacent to waters of this state and shall signify its approval of or objection to each application.

(4) INJUNCTIVE RELIEF.—The department may bring an action for injunctive relief against any person who owns, constructs, or operates an offshore wind energy facility or a wind turbine in this state in violation of this section.

Section 11. Sections 377.801, 377.802, 377.803, 377.804, 377.808, 377.809, and 377.816, Florida Statutes, are repealed.

Section 12. (1) For programs established pursuant to s. 377.804, s. 377.808, s. 377.809, or s. 377.816, Florida Statutes, there may not be:

(a) New or additional applications, certifications, or allocations approved.

(b) New letters of certification issued.

(c) New contracts or agreements executed.

(d) New awards made.

(2) All certifications or allocations issued under such programs are rescinded except for the certifications of, or allocations to, those certified applicants or projects that continue to meet the applicable criteria in effect before July 1, 2024. Any existing contract or agreement authorized under any of these programs shall continue in full force and effect in accordance with the statutory requirements in effect when the contract or agreement was executed or last modified. However, further modifications, extensions, or waivers may not be made or granted relating to such contracts or agreements, except computations by the Department of Revenue of the income generated by or arising out of the qualifying project.

Section 13. Paragraph (d) of subsection (2) of section 220.193, Florida Statutes, is amended to read:

220.193 Florida renewable energy production credit.—

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

(d) "Florida renewable energy facility" means a facility in the state that produces electricity for sale from renewable energy~~, as defined in s. 377.803~~.

Section 14. Subsection (7) of section 288.9606, Florida Statutes, is amended to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 366.91 ~~or s. 377.803~~;

(b) Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; ~~or~~

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08; or~~.~~

(d) Finance the costs of acquisition or construction of a transportation facility by a private entity or consortium of private entities under a public-private partnership agreement authorized by s. 334.30.

Section 15. Paragraph (w) of subsection (2) of section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines, standards, and exemptions.—

(2) STATUTORY EXEMPTIONS.—The following developments are exempt from s. 380.06:

~~(w) Any development in an energy economic zone designated pursuant to s. 377.809 upon approval by its local governing body.~~

If a use is exempt from review pursuant to paragraphs (a)-(u), but will be part of a larger project that is subject to review pursuant to s. 380.06(12), the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development that includes a landowner, tenant, or user that has entered into a funding agreement with the state land planning agency under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 16. Subsection (2) of section 403.9405, Florida Statutes, is amended to read:

403.9405 Applicability; certification; exemption; notice of intent.—

(2) ~~No construction of~~ A natural gas transmission pipeline may not be constructed ~~be undertaken after October 1, 1992,~~ without first obtaining certification under ss. 403.9401-403.9425, but these sections do not apply to:

(a) Natural gas transmission pipelines which are less than 100 ~~15~~ miles in length or which do not cross a county line, unless the applicant has elected to apply for certification under ss. 403.9401-403.9425.

(b) Natural gas transmission pipelines for which a certificate of public convenience and necessity has been issued under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, unless the applicant elects to apply for certification of that pipeline under ss. 403.9401-403.9425.

(c) Natural gas transmission pipelines that are owned or operated by a municipality or any agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas, unless the applicant elects to apply for certification of that pipeline under ss. 403.9401-403.9425.

Section 17. Subsection (3) of section 720.3075, Florida Statutes, is amended to read:

720.3075 Prohibited clauses in association documents.—

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws,

may not preclude:

(a) The display of up to two portable, removable flags as described in s. 720.304(2)(a) by property owners. However, all flags must be displayed in a respectful manner consistent with the requirements for the United States flag under 36 U.S.C. chapter 10.

(b) Types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers within the association that such entities are authorized to serve:

1. A public utility or an electric utility as defined in chapter 366;

2. An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

3. A natural gas utility as defined in s. 366.04(3)(c);

4. A natural gas transmission company as defined in s. 368.103; or

5. A Category I liquefied petroleum gas dealer, a Category II liquefied petroleum gas dispenser, or a Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(c) The use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in paragraph (b). As used in this paragraph, the term "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

Section 18. (1) The Public Service Commission shall conduct an assessment of the security and resiliency of the state's electric grid and natural gas facilities against both physical threats and cyber threats. In conducting this assessment, the commission shall consult with the Division of Emergency Management and, in its assessment of cyber threats, shall consult with the Florida Digital Service. All electric utilities, natural gas utilities, and natural gas pipelines operating in this state, regardless of ownership structure, shall cooperate with the commission to provide access to all information necessary to conduct the assessment.

(2) By July 1, 2025, the commission shall submit a report of its assessment to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must also contain any recommendations for potential legislative or administrative actions that may enhance the physical security or cyber security of the state's electric grid or natural gas facilities.

Section 19. (1) Recognizing the evolution and advances that have occurred and continue to occur in nuclear power technologies, the Public Service Commission shall study and evaluate the technical and economic feasibility of using advanced nuclear power technologies, including small modular reactors, to meet the electrical power needs of the state, and research means to encourage and foster the installation and use of such technologies at military installations in the state in partnership with public utilities. In conducting this study, the commission shall consult with the Department of Environmental Protection and the Division of Emergency Management.

(2) By April 1, 2025, the commission shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, containing its findings and any recommendations for potential legislative or administrative actions that may enhance the use of advanced nuclear technologies in a manner consistent with the energy policy goals in s. 377.601(2), Florida Statutes.

Section 20. (1) Recognizing the continued development of technologies that support the use of hydrogen as a transportation fuel and the potential for such use to help meet the state's energy policy goals in s. 377.601(2), Florida Statutes, the Department of Transportation, in consultation with the Office of Energy within the Department of Agriculture and Consumer Services, shall study and evaluate the potential development of hydrogen fueling infrastructure, including fueling stations, to support hydrogen-powered vehicles that use the State Highway System.

(2) By April 1, 2025, the Department of Transportation shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, containing its findings and any recommendations for potential legislative or administrative actions that may accommodate the future development of hydrogen fueling infrastructure in a manner consistent with the energy policy goals in s. 377.601(2), Florida Statutes.

Section 21. This act shall take effect July 1, 2024.

The Florida Senate

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02/27/24
Meeting Date

Fiscal Policy
Committee

SB - 1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name Daniel Siegel

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Email daniel.lewis.siegel@gmail.com

Tallahassee Florida 32304
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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FP
Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name Kim Dinkins 1000 Friends of FL

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Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: 1000 Friends of FL

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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Fiscal Policy
Committee

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SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name Yenisbel Vilorio

Phone

Address
Street

Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Six Action

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S. FISCAL POLICY
Committee

SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name KEYNA CORY

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City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

NATIONAL WASTE + RECYCLING ASSN - FL CHAPTER

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/27/24
Meeting Date

Fiscal Policy
Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Booker

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DeLand FL 32720
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Volusia County

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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Meeting Date

Fiscal Policy
Committee

SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

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Email Garrett.wallace@TNC.ORG

Tallahassee FL 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
The Nature Conservancy

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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02/27/2024
Meeting Date

Fiscal Policy
Committee

1024
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tejah Sanders

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Street

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Tallahassee FL 32304
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
[redacted]

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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27 Feb 2024
Meeting Date

Fiscal Policy
Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chris Stranburg

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Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Americans for Prosperity

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2-27-24
Meeting Date

EP
Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

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TALLAHASSEE FL 32303
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
SIERRA CLUB FLORIDA

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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Fiscal Policy
Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

Name Karen Woodall

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Email fcfep@yahoo.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Earth Justice

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/2024
Meeting Date

Fiscal Policy
Committee

SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

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☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

2/27/24

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SB [redacted] 1624

Bill Number or Topic

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: GenCLEO Action Fund

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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2/27/24
Meeting Date

Fiscal Policy
Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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Meeting Date

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Committee

1624
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Rising

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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Fiscal Policy
Committee

SB 1624
Bill Number or Topic

Amendment Barcode (if applicable)

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PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

ReThink Energy Action Fund

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1640
INTRODUCER:	Fiscal Policy Committee and Senator Collins
SUBJECT:	Payments for Health Care Services
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Johnson	Yeatman	FP	**Fav/CS**

I. Summary:

CS/SB 1640 creates several consumer protections relating to the collection of medical debt and creates price transparency requirements for hospitals, ambulatory surgical centers (ASC) and insurers relating to nonemergency services. In regards to the collection of hospital and ASC medical debt, the bill:

- Prohibits a hospital or ASC from engaging in extraordinary collections actions, such as certain legal or judicial processes including commencing a civil action, garnishing wages or placing a lien on property.
- Establishes a three-year statute of limitations for actions to collect medical debt, which runs from the later of the date on which the facility completes written notification of the medical debt or the date on which the facility refers the medical debt to a third-party for collection. Currently, medical debt is subject to a five-year statute of limitation.
- Exempts from attachment, garnishment or other legal process in an action on hospital medical debt:
  - A debtor's interest, not to exceed $10,000 in value, in a single motor vehicle. Currently, the exempt interest is $1,000.
  - A debtor's interest in personal property, not to exceed $10,000 in value, if the debtor does not claim or receive the benefits of a homestead exemption. Currently, the exempt interest is $1,000.

SB 1640 also includes the following price transparency requirements:

- A hospital or ASC must post standard charges for specified services on its website and establish a process for reviewing and responding to grievances from patients.
- Hospitals and ASCs must provide estimates of anticipated charges for nonemergency services and provide such estimates to the patient's health insurer.
- A health insurer, in turn, must prepare an "advanced explanation of benefits" for the patient, within a specified time frame prior to the service being provided, based on the facility's estimate.

The bill also revises the current voluntary shared savings incentive program for insurers participating in the individual market to make the program mandatory for such insurers.

The bill expands the health care providers that may participate in a direct health care agreement that is exempt from the insurance code to include a health care provider licensed under ch. 490 (practice of psychology) or ch. 491, F.S. (clinical, counseling, and psychotherapy services).

The fiscal impact of the bill, relating to the enforcement of the federal transparency requirements for hospitals and ASCs by the Agency for Health Care Administration is indeterminate. The Office of Insurance Regulation estimates that changing the shared savings program from a voluntary to mandatory program for insurers and HMOs will require an additional $193,000 salaries and benefits and $150,000 in rate to upgrade, recruit, and fill specific positions to accommodate the additional workload.

II. Present Situation:

Office of Insurance Regulation

In Florida, the Office of Insurance Regulation (OIR) licenses and regulates insurers, HMOs, and other risk-bearing entities. To operate in Florida, an insurer or HMO must obtain a certificate of authority from the OIR and comply with the requirements of the Florida Insurance Code. The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Prior to receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency. As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care. Rates and forms for health insurers and HMOs are subject to prior approval by the OIR.[1] Such rates may not be excessive, inadequate, or unfairly discriminatory.[2]

The federal Patient Protection and Affordable Care Act (PPACA)[3] requires health insurance issuers to submit data on the proportion of premium revenues spent on clinical services and quality improvement, also known as the medical loss ratio (MLR).[4] It also requires them to issue rebates to enrollees if this percentage does not meet minimum standards. The PPACA requires insurers that provide coverage to small businesses and individuals to spend at least 80 percent of their premium income on health care claims and quality improvement, leaving the remaining 20 percent for administration, marketing, and profit.[5] Large group plans must spend at least 85 percent of premium dollars on medical care.[6] If an insurer fails to meet the applicable MLR standard in any given year, the issuer is required to provide a rebate to its customers.

[1] Part I, ch. 627, F.S.
[2] *Id*.
[3] Pub. L. 111-148, Mar. 23, 2010.
[4] Medical Loss Ratio | CMS (last visited Jan. 30, 2024)
[5] Medical Loss Ratio: Getting Your Money's Worth on Health Insurance | CMS (last visited Jan. 30, 2024).
[6] *Id*.

The regulations finalized in October 2020 specify that expenses by a health plan in direct support of a shared savings program must be counted as medical expenditures.[7] Thus, a health insurer or HMO providing shared savings to insureds or subscribers will receive an equivalent credit towards meeting the MLR standards established by PPACA.

Florida Shared Savings Programs[8]

In 2019, the Legislature created a voluntary shared savings program for the commercial insurance market, which allows health insurers and health maintenance organizations (HMOs) to provide financial incentives to insureds with individual policies or contracts when they obtain health care services offered by their health insurer or HMO through their shared savings list. Participation is voluntary and optional for insureds and subscribers. The shoppable health care services are lower-cost, non-emergency services for which a shared savings incentive is available for insureds under the program. An established program may offer a shared savings incentive payment to an insured who receives treatment from a comprehensive list of more than 25 individual entities or groups that provide a health care service; this includes hospitals, physicians, nursing homes, pharmacies, and others.[9] Health insurers offering a shared savings incentive program must submit an annual report to the Office of Insurance Regulation (OIR) regarding the performance of the program. Currently, one insurer is participating in the voluntary program.

On January 1, 2019, the Division of State Group Insurance of the Department of Management Services instituted a voluntary shared savings program to reward insureds, subscribers, or their dependents for making informed and cost-effective decisions about health care spending.[10] The program allows participants to earn rewards by receiving rewardable healthcare services through two state vendors. Rewards are credited to a select pretax savings or spending account of the participant, and funds can be used to pay for eligible medical, dental, and vision expenses. Rewards are earned after the participant shops for a rewardable healthcare service on the website, receives the service, and the claim has been paid.[11] For fiscal year 2022-2023, total expenses for the program was $18.6 million. The program spent $9.6 million on claims, $6.3 million on administrative fees, and paid out $2.0 million in shared savings to employees.[12]

U.S. Health Care Spending

Major Payers of Health Care Spending

Highlights of the 2022 national health expenditures data[13] include:

[7] 45 CFR Part 158.
[8] Section 627.6387, 627.6648, and 641.31076, F.S.
[9] Ss. 627.6387, 627.6648, and 641.31076, F.S. The State Employee Group Program, which provides health care benefits to state employees, also offers a shared savings program, described in s. 110.12303, F.S.
[10] Ch. 2017-70, L.O.F.
[11] MyBenefits, Shared Savings Program, available at https://www.mybenefits.myflorida.com/health/shared_savings_program (last viewed Jan. 30, 2024).
[12] State Employees Group Health Self-Insurance Trust Fund, Exhibit II, Financial Outlook by Fiscal Year (Jan. 10, 2024) HealthInsuranceOutlook.pdf (state.fl.us) (last visited Jan. 20, 2024).
[13] Centers for Medicare and Medicaid, National Health Expenditure Data https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data (last visited Jan. 31, 2024).

- Private health insurance spending grew 5.9% to $1,289.8 billion in 2022, or 29 percent of total NHE.
- Out of pocket spending grew 6.6% to $471.4 billion in 2022, or 11 percent of total NHE.
- Hospital expenditures grew 2.2% to $1,355.0 billion in 2022, slower than the 4.5% growth in 2021.
- Physician and clinical services expenditures grew 2.7% to $884.9 billion in 2022, slower growth than the 5.3% in 2021.
- Prescription drug spending increased 8.4% to $405.9 billion in 2022, faster than the 6.8% growth in 2021.
- The largest shares of total health spending were sponsored by the federal government (33 percent) and the households (28 percent). The private business share of health spending accounted for 18 percent of total health care spending, state and local governments accounted for 15 percent, and other private revenues accounted for 7 percent.

In 2020, California's personal health care spending was highest in the nation ($410.9 billion), representing 12.2 percent of total U.S. personal health care spending. Comparing historical state rankings through 2020, California consistently had the highest level of total personal health care spending, together with the highest total population in the nation. Other large states, New York, Texas, Florida, and Pennsylvania, also were among the states with the highest total personal health care spending. [14] In 2020, the average per enrollee cost of private health insurance in Florida was $5.057. In comparison, the per capita personal health care spending ranged from $7,522 in Utah to $14,007 in New York.[15] The national average for per capita spending was $10,191.[16]

U.S. Health Outcomes

Although the United States spends more of its gross domestic product on health care than any other country, the U.S. has the highest rate of infant deaths as well as the highest rate of preventable deaths.[17] Many experts suggest that these longstanding, widespread problems stem in part from the misaligned incentives built into the traditional, fee-for-service payment model.[18] Under fee-for-service, health care providers, such as physicians and hospitals, are paid for each service they provide, resulting rewards for greater utilization or volume, they are paid more if they deliver more services, even if they don't achieve desired results.

Value-Based Payment Models

In response to concerns about rising medical costs, greater utilization of services, and quality of outcomes, many insurers and HMOs have implemented value-based health care payment models (e.g., bundled payments) with providers, which aim to change that dynamic, so physicians earn more for delivering health care that helps patients have better outcomes, while also keeping costs down, thereby reducing costs and inefficiencies in the health care system.

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[14] National Health Expenditures Fact Sheet, https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data/nhe-fact-sheet (last visited Jan. 20, 2024).
[15] State Health Expenditure Accounts by State of Residence Highlights https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/downloads/res-highlights.pdf (last visited Jan. 20, 2024).
[16] *Id.*
[17] Value-Based Care: What It Is, and Why It's Needed | Commonwealth Fund (Feb. 7, 2023).
[18] *Id.*

Medical Debt

Medical debt, or personal debt incurred from unpaid medical bills, is a leading cause of bankruptcy in the United States. Two-thirds of medical debts are the result of a one-time or short-term medical expense arising from an acute medical need.[19] Many medical collections on consumer credit reports are low-dollar accounts. Data from the CFPB's Consumer Credit Panel show that in 2020, the median medical collection was $310, the mean medical collection was $773, and 62 percent of medical collections were under $490.[20] In Florida, approximately 14.3 percent of the population has medical debt in collection.[21] The median amount of medical debt in collections is $915.[22] The percentage of persons without health insurance coverage is 12.1 percent.[23] Medical debt is the most common collection information reported on consumer credit records.[24]

The Urban Institute analysis found that, as of December 2020, among people who had at least one medical collection on their credit record, the median person owed a total of $797 in medical debt.[25] Additionally, some medical debts are not included on credit records but may be captured in surveys.

Medical Debt Collection Process in Florida

Current law provides a court process for the collection of lawful debts, including medical debts. A creditor may sue a debtor and, if the creditor prevails, the creditor may receive a final judgment awarding monetary damages. If the debtor does not voluntarily pay the judgment, the creditor has several legal means to collect on the debt, including:

- Wage garnishment.
- Garnishment of money in a bank account.
- Directing the sheriff to seize assets, sell them, and give the proceeds to the creditor.

In order to protect debtors from being destitute, current law provides that certain property is exempt from being taken by a creditor. The Florida Constitution provides that the debtor's homestead and $1,000 of personal property is exempt.[26] Statutory law provides numerous categories of exempt property, and federal statutory law also provides certain exemptions that apply in all of the states.[27]

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[19] Hamel, Liz et al. "The Burden of Medical Debt: January 2016 Results from the Kaiser Family Foundation/New York Times Medical Bills Survey." Kaiser Family Foundation. January 2016. The Burden of Medical Debt: Results from the Kaiser Family Foundation/New York Times Medical Bills Survey (kff.org) (last visited Jan. 20, 2024).
[20] Medical Debt Burden in the United States (consumerfinance.gov). (last visited Jan. 28, 2024).
[21] Debt in America: State-Level Medical Debt | Urban Data Catalog (Sep. 14, 2023) and Debt in America: An Interactive Map; Technical Appendix (urban-data-catalog.s3.amazonaws.com) (last visited Jan. 28, 2024).
[22] *Id.*
[23] *Id.*
[24] Furey, Michael and Ryan Kelly. "Market Snapshot: Third-Party Debt Collections Tradeline Reporting." Consumer Financial Protection Bureau. July 18, 2019. https://files.consumerfinance.gov/f/documents/201907_cfpb_thirdparty-debt-collections_report.pdf. (last visited Jan. 25, 2024).
[25] Debt in America: An Interactive Map (urban.org) (last visited Jan. 24, 2024).
[26] Art. X, s. 4(a), Fla. Const.
[27] For example, the federal ERISA law provides that most retirement plans are exempt from creditor claims.

In addition to the protection from creditors contained in the Florida Constitution, chapter 222, F.S., protects other personal property from certain claims of creditors and legal process: garnishment of wages for a head of family;[28] proceeds from life insurance policies;[29] wages or unemployment compensation payments due certain deceased employees;[30] disability income benefits;[31] assets in qualified tuition programs; medical savings accounts; Coverdell education savings accounts; hurricane savings accounts;[32] $1,000 interest in a motor vehicle; professionally prescribed health aids; certain refunds or credits from financial institutions; and $4,000 interest in personal property, if the debtor does not claim or receive the benefits of a homestead exemption under the State Constitution.[33]

Bankruptcy is a means by which a person's assets are liquidated in order to pay that person's debts under court supervision. The U.S. Constitution gives Congress the right to uniformly govern bankruptcy law.[34] Bankruptcy courts are operated by the federal government. A debtor (the bankrupt person) is not required to give up all of his or her assets in bankruptcy. Certain property is deemed "exempt" from the bankruptcy case and may be kept by the debtor without being subject to creditor claims. The Bankruptcy Code provides for exempt property in a bankruptcy case.[35] In general, a debtor may choose to utilize the exempt property listing in state law or the exempt property of the Bankruptcy Code. However, federal law allows a state to opt-out of the federal law and thereby insist that debtors only utilize state law exemptions.[36] Florida, like most states, has made the opt-out election to prohibit the use of the federal exemptions and require that debtors may only use state law exemptions.[37]

Federal and Other State Laws Governing Medical Debt Collections

The Consumer Financial Protection Bureau's (CFPB) debt collection final rule, which revised Regulation F, the rule implementing the Fair Debt Collection Practices Act (FDCPA), took effect November 30, 2021. The FDCPA and Regulation F, apply to "debt collectors,"[38] as that term is defined in the statute, including, in general, debt collectors collecting medical debts. Generally the FDCPA and Regulation F do not apply to medical service providers or their employees who attempt to collect debts owed to the provider. The FDCPA and Regulation F prohibit, among other things, using "unfair or unconscionable means to collect or attempt to collect any debt."

Among other changes, the final rule prohibits "debt parking," also known as passive or delayed collections. This is the practice of furnishing collection information about a debt to a consumer

[28] Section 222.11, F.S.
[29] Section 222.13, F.S.
[30] Section 222.15, F.S.
[31] Section 222.18, F.S.
[32] Section 222.22, F.S.
[33] Section 222.25, F.S.
[34] Art. 1, s. 8, cl. 4, U.S. Const.
[35] 11 U.S.C. s. 522.
[36] 11 U.S.C. s. 522(b).
[37] Section 222.20, F.S.
[38] Under the FDCPA, a debt collector is "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." The FDCPA additionally provides certain exemptions from this definition.

reporting company before communicating with the consumer about the debt.[39]210 This practice was previously employed by some medical debt collectors, who would report a debt to a consumer reporting company, then wait for the debtor to notice the reported debt when, for example, applying for credit. Regulation F addresses the practice of "debt parking" by requiring a debt collector to take certain actions intended to convey information about the debt to the debtor before furnishing information about that debt to a consumer reporting company.

The FDCPA and Regulation F also require debt collectors, including medical debt collectors, to provide certain information about the debt to consumers at or near the outset of collections. Regulation F requires debt collectors to include, as part of this information, an itemization of the current amount of the debt. This itemization may help individuals recognize and understand medical debts in collection.

Billing and Collection Requirements for Tax Exempt Charitable Hospitals[40]

In addition to the general requirements for tax exemption under the internal .Revenue Code (I.R.C.). s.501(c)(3)[41] and Revenue Ruling[42] 69-545PDF, hospital organizations must meet the requirements imposed by I.R.C. s. 501(r) on a facility-by-facility basis in order to be treated as an organization described in I.R.C. s. 501(c)(3). These additional requirements are:

- Community Health Needs Assessment (CHNA) – I.R.C. s. 501(r)(3),
- Financial Assistance Policy and Emergency Medical Care Policy – I.R.C. s. 501(r)(4),
- Limitation on Charges – I.R.C. s. 501(r)(5), and
- Billing and Collections – I.R.C. s. 501(r)(6).

The I.R.C. s. 501(r)(6) requires a hospital organization to make reasonable efforts to determine whether an individual is eligible for assistance under the hospital organization's financial assistance policy (FAP) before engaging in extraordinary collection actions (ECAs) against that individual. For these purposes, a hospital facility is considered to have engaged in ECAs against an individual to obtain payment for care if the hospital facility engages in such ECAs against any other individual who has accepted or is required to accept responsibility for the first individual's hospital bill for the care.

A hospital facility is held accountable for the ECAs of third parties collecting debt on its behalf or to which it sells debt. The hospital facility is deemed to have engaged in an ECA against the individual to obtain payment for the care, or to have taken one or more steps necessary to have made reasonable efforts to determine whether an individual is FAP-eligible for the care, if any purchaser of the individual's debt, any debt collection agency or other party to which the hospital

[39] FTC Stops Debt Collector's Alleged "Debt Parking" Scheme, Requires it to Delete Debts it Placed on Consumers' Credit Reports (Nov. 30, 2020). https://www.ftc.gov/news-events/news/press-releases/2020/11/ftc-stops-debt-collectors-alleged-debt-parking-scheme-requires-it-delete-debts-it-placed-consumers (last visited Jan. 29, 2024).

[40] The Internal Revenue Service, Billing and Collection- Section 501(r)(6), https://www.irs.gov/charities-non-profits/billing-and-collections-section-501r6 (last visited Feb. 24, 2024).

[41] Charitable Hospitals - General Requirements for Tax-Exemption under Section 501(c)(3) https://www.irs.gov/charities-non-profits/charitable-hospitals-general-requirements-for-tax-exemption-under-section-501c3 (last visited Feb. 24, 2024).

[42] Internal Revenue Service, Rev. Rul. 69-545, 1969-2 C.B. 117, https://www.irs.gov/pub/irs-tege/rr69-545.pdf (last visited Feb. 24, 2024).

facility has referred the individual's debt, or any substantially-related entity has engaged in such an ECA or taken steps (whichever is applicable).

Hospital facilities are accountable for the ECAs of the debt collection agencies and debt buyers to which they refer or sell debt. If a hospital facility acts reasonably and in good faith to supervise and enforce the I.R.C. s. 501(r)(6) obligations of its contractual agreements with debt collectors or purchasers and corrects any contractual violations it discovers, an error on the part of the debt collectors or purchasers is not considered willful. If such nonwillful violation is not egregious, it could be excused if the hospital facility corrects and discloses the failure using the procedures outlined in the Rev. Proc. 2015-21.

A claim filed by a hospital facility in any bankruptcy proceeding is not an ECA. Also, a lien placed on the proceeds of a judgment, settlement, or compromise owed to an individual (or his or her representative) as a result of personal injuries caused by a third party for which the hospital facility provided care is not an ECA.

The I.R.C. s. 501(r)(6) does not prohibit debt sales; however, debt sales generally are considered ECAs because hospital facilities have less control over a debt once it's been sold and the debt buyers generally will have less information regarding an individual and the debt and more incentive to engage in ECAs before making reasonable efforts to determine whether an individual is FAP-eligible.

A hospital facility's sale of an individual's debt for medical care is not an ECA if, prior to the sale, the hospital facility enters into a legally binding written agreement with the purchaser of the debt containing the following four conditions:

- The purchaser must agree not to engage in any ECAs to obtain payment of the debt.
- The purchaser must agree not to charge interest on the debt in excess of the rate in effect under I.R.C. s. 6621(a)(2) at the time the debt is sold (or such other interest rate set by notice or other guidance published in the Internal Revenue Bulletin).
- The debt must be returnable to or recallable by the hospital facility upon a determination by the hospital facility or the purchaser that the individual is FAP-eligible.
- If the individual is determined to be FAP-eligible and the debt is not returned to or recalled by the hospital facility, the purchaser must adhere to procedures specified in the agreement. The agreement must ensure that the individual does not pay, and has no obligation to pay, the debt purchaser and the hospital facility together more than he or she is personally responsible for paying as a FAP-eligible individual.

Because debt sales subject to these four conditions are not considered to be ECAs, a hospital facility may make these debt sales without first having made reasonable efforts to determine FAP-eligibility. Debt sales that do not satisfy these four conditions are ECAs and may not be made until after a hospital facility has made reasonable efforts to determine FAP-eligibility.

State Laws Relating to Financial Assistance for Patients with Medical Bills

Some hospitals and managed care organizations have financial assistance programs that aim to reduce financial burdens for low-income patients. Under the federal Affordable Care Act (ACA),

nonprofit hospitals are required to offer financial assistance to patients.[43] Certain states also require hospitals to offer programs to help patients with medical bills. Eligibility for these programs varies. Several states—including California, Connecticut, Illinois, Maine, Maryland, Nevada, New Jersey, New York, Rhode Island, and Washington—require discounted or free care for people with low incomes.[44] Certain states extend these protections to those with moderate incomes, as well. In most states, the mandates apply to all hospitals, but in some states, mandates cover only nonprofit, publicly funded, rural, or critical-access hospitals.

State Laws and Consumer Protection Related to Medical Debt Collection

Further, states such as Maryland, Nevada, New Mexico,[45] California, and Washington have enacted legislation providing expanded protections relating to disclosures, delayed credit reporting, and debt collection, as described below:

- Washington (law effective July 28, 2019). Prohibits health care providers and facilities from selling or assigning medical debt until at least 120 days after the initial billing statement. Prohibits certain practices with respect to medical debt, including the reporting of adverse information to consumer credit reporting agencies or credit bureaus until at least 180 days after the original obligation was received by the licensee for collection or by assignment; and, if the claim involves hospital debt, failure to include certain information regarding charity care or collection during the pendency of an application for charity care about which the licensee has received notice.[46]
- Maryland (law effective January 1, 2021). Specifies the method for calculating family income to be used to consider free or reduced-cost medic\al care under a certain hospital financial assistance policy; and prohibits a hospital from charging interest or fees on certain debts incurred by certain patients.[47]
- California (law effective January 1, 2022). Prohibits a hospital from selling patient debt to a debt buyer, unless specified conditions are met, including that the hospital has found the patient ineligible for financial assistance or the patient has not responded to attempts to bill or offer financial assistance for 180 days. Requires that uninsured patients or patients with high medical costs who are at or below 400 percent of the federal poverty level be eligible for charity care or discount payments from a hospital, and authorizes a hospital to grant eligibility for charity care or discount payments to patients with incomes over 400 percent of the federal poverty level. Prohibits debt collection before 180 days after the initial billing.[48]
- Nevada (law effective July 1, 2021). Requires a collection agency to notify a debtor 60 days before taking any action to collect a medical debt; providing certain protections to a medical debtor who initiates contact with or makes a voluntary payment to a collection agency; prohibiting certain practices relating to the collection of medical debt; prohibiting the waiver of certain protections provided to medical debtors.[49]

Florida Patient's Bill of Rights and Responsibilities

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[43] 26 U.S.C. s. 501(r).
[44] Medical Debt Burden in the United States (consumerfinance.gov) (last visited Jan. 29, 2024).
[45] SB0071JUS2 (nmlegis.gov) New Mexico Legislature. (last visited Jan. 29, 2024).
[46] 1531-S HBR FBR 19.pdf (wa.gov) Washington House. (last visited Jan. 28, 2024).
[47] Legislation - SB0514 (maryland.gov) Maryland General Assembly. (last visited Jan. 22, 2024).
[48] Bill Text - AB-1020 Health care debt and fair billing. California Legislative Information. (last visited Jan. 22, 2024).
[49] SB248 Text (state.nv.us) Nevada Legislature. (last visited Jan. 28, 2024)

In 1991, the Legislature enacted the Florida Patient's Bill of Rights and Responsibilities (Patient's Bill of Rights).[50] The statute established the right of patients to expect medical providers to observe standards of care in providing medical treatment and communicating with their patients.[51] The standards of care include, but are not limited to, the following aspects of medical treatment and patient communication:

- Individual dignity;
- Provision of information;
- Financial information and the disclosure of financial information;
- Access to health care;
- Experimental research; and
- Patient's knowledge of rights and responsibilities.

A patient has the right to request certain financial information from health care providers and facilities.[52] Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.[53] Estimates must be written in language "comprehensible to an ordinary layperson."[54] The reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient's needs or medical condition warrant.[55] A patient has the right to receive a copy of an itemized bill upon request and to receive an explanation of charges upon request.[56]

Currently, under the financial information and disclosure provisions in the Patient's Bill of Rights:

- A request is necessary before a health care provider or health care facility must disclose to a Medicare-eligible patient whether the provider or facility accepts Medicare payment as full payment for medical services and treatment rendered in the provider's office or health care facility.
- A request is necessary before a health care provider or health care facility is required to furnish a person an estimate of charges for medical services before providing the services. The Florida Patient's Bill of Rights and Responsibilities does not require that the components making up the estimate be itemized or that the estimate be presented in a manner that is easily understood by an ordinary layperson.
- A licensed facility must place a notice in its reception area that financial information related to that facility is available on the website of the Agency for Health Care Administration (AHCA).
- The facility may indicate that the pricing information is based on a compilation of charges for the average patient and that an individual patient's charges may vary.
- A patient has the right to receive an itemized bill upon request.

[50] Section 1, Ch. 91-127, Laws of Fla. (1991); s. 381.026, F.S.
[51] Section 381.026(3), F.S.
[52] Section 381.026(4)(c), F.S.
[53] Section 381.026(4)(c)3., F.S.
[54] *Id.*
[55] *Id.*
[56] Section 381.026(4)(c)5., F.S.

Health care providers and health care facilities are required to make available to patients a summary of their rights. The applicable regulatory board or the AHCA may impose an administrative fine when a provider or facility fails to make available to patients a summary of their rights.[57]

The Patient's Bill of Rights also authorizes, but does not require, primary care providers[58] to publish a schedule of charges for the medical services offered to patients.[59] The schedule must include certain price information for at least the 50 services most frequently provided by the primary care provider.[60] The law also requires the posting of the schedule in a conspicuous place in the reception area of the provider's office and at least 15 square feet in size.[61] A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single two-year period.[62]

The law also requires urgent care centers to publish a schedule of charges for the medical services offered to patients.[63] This applies to any entity that holds itself out to the general public, in any manner, as a facility or clinic where immediate, but not emergent, care is provided, expressly including offsite facilities of hospitals or hospital-physician joint ventures, and licensed health care clinics that operate in three or more locations. The schedule requirements for urgent care centers are the same as those established for primary care providers.[64] The schedule must describe each medical service in language comprehensible to a layperson. This provision prevents a center from using medical or billing codes, Latin phrases, or technical medical jargon as the only description of each medical service. An urgent care center that fails to publish and post the schedule of charges is subject to a fine of not more than $1,000 per day, until the schedule is published and posted.[65]

Florida Price Transparency: Health Care Facilities

Under s. 395.301, F.S., a health care facility[66] must provide, within seven days of a written request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's condition. Upon request, the facility must also provide revisions to the estimate. The estimate may represent the average charges for that diagnosis related group[67] or the average

[57] Section 381.0261, F.S.
[58] Section 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.
[59] Section 381.026(4)(c)3., F.S.
[60] *Id.*
[61] *Id.*
[62] Section 381.026(4)(c)4., F.S.
[63] Section 395.107(1), F.S.
[64] Section 395.107(2), F.S.
[65] Section 395.107(6), F.S.
[66] The term "health care facilities" refers to hospitals and ambulatory surgical centers, which are licensed under part I of Chapter 395, F.S.
[67] Diagnosis related groups (DRGs) are a patient classification scheme which provides a means of relating the type of patients a hospital treats (i.e., its case mix) to the costs incurred by the hospital. DRGs allow facilities to categorize patients based on severity of illness, prognosis, treatment difficulty, need for intervention and resource intensity.

charges for that procedure. The facility is required to place a notice in the reception area that this information is available. A facility that fails to provide the estimate as required may be fined $500 for each instance of the facility's failure to provide the requested information.

Also, pursuant to s. 395.301, F.S., a licensed facility must notify each patient during admission and at discharge of his or her right to receive an itemized bill upon request. If requested, within seven days of discharge or release, the licensed facility must provide an itemized statement, in language comprehensible to an ordinary layperson, detailing the specific nature of charges or expenses incurred by the patient. This initial bill must contain a statement of specific services received and expenses incurred for the items of service, enumerating in detail the constituent components of the services received within each department of the licensed facility and including unit price data on rates charged by the licensed facility. The patient or patient's representative may elect to receive this level of detail in subsequent billings for services.

Current law also directs these health care facilities to publish information on their websites detailing the cost of specific health care services and procedures, as well as information on financial assistance that may be available to prospective patients. The facility must disclose to the consumer that these averages and ranges of payments are estimates, and that actual charges will be based on the services actually provided.[68] Under s. 408.05, F.S., the AHCA contracts with a vendor to collect and publish this cost information to consumers on an internet site.[69] Hospitals and other facilities post a link to this site – known as Florida Health Finder – to comply with the price transparency requirements. The cost information is searchable, based on descriptive bundles of commonly performed procedures and services. The information must, at a minimum, provide the estimated average payment received and the estimated range of payment from all non-governmental payers for the bundles available at the facility.[70]

The law also establishes the right of a patient to request a personalized estimate on the costs of care from health care practitioners who provide services in a licensed hospital facility or ambulatory surgical center.[71]

Federal Transparency Requirements - Hospitals

On November 15, 2019, the federal Centers for Medicare & Medicaid Services (CMS) finalized regulations[72] changing payment policies and rates for services furnished to Medicare beneficiaries in hospital outpatient departments. In doing so, the federal CMS also established new requirements for hospitals to publish standard charges for a wide range of health care services offered by such facilities. Specifically, the regulations require hospitals to make public both a machine-readable file of standard charges and a consumer-friendly presentation of prices

[68] Section 395.301, F.S.
[69] Section 408.05(3)(c), F.S.
[70] *Id.*
[71] Section 456.0575(2), F.S.
[72] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).

for at least 300 "shoppable" health care services. The regulations became effective on January 1, 2021.[73]

The regulations define a "shoppable" service as one that can be scheduled in advance, effectively giving patients the opportunity to select the venue in which to receive the service. This is a more expansive designation of shoppable services than currently exists in Florida law. For each shoppable service, a hospital must disclose several pricing benchmarks to include:

- The gross charge;
- The payer-specific negotiated charge;
- A de-identified minimum negotiated charge;
- A de-identified maximum negotiated charge; and,
- The discounted cash price.

This information should provide a patient with both a reasonable estimate of the charge for a shoppable service, and also a range in which the actual charge can be expected to fall.

The penalty for facility noncompliance under the federal regulations is a maximum fine of $300 per day.[74]

Federal Oversight and Enforcement Relating to Price Transparency Requirements for Hospitals

The federal hospital transparency requirements were effective January 1, 2021. To be fully compliant, a hospital must have a complete machine-readable standard charge file; and either a consumer friendly 300 shoppable services list; or an online price estimator tool.[75] A 2021 review of more than 3,500 hospitals found that 55 percent of hospitals were not compliant with the rule and had not posted price information for commercial plans or had not posted any prices at all.[76] Nearly 84 percent of hospitals failed to post machine-readable files containing standard charges, and roughly 78 percent of hospitals did not provide a consumer-friendly shoppable services display.[77]

In response to compliance concerns, the Centers for Medicare and Medicaid Services (CMS) has increased the number of comprehensive reviews conducted from 30-40 per month to over 200 comprehensive reviews per month.[78] As of April 2023, CMS has issued more than 730 warning notices and 269 requests for corrective action plans (CAPs). The CMS has imposed CMPs on six hospitals for noncompliance and the CMPS on an additional eight hospitals, including a Florida hospital, are under review or appeal, which are posted and made publicly available on the CMS

[73] *Id.*
[74] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).
[75] 45 C.F.R. Subtitle A Subchapter E Part 180.
[76] John Xuefeng Jiang, et al., *Factors associated with compliance to the hospital price transparency final rule: A national landscape study*, Journal of General Internal Medicine (2021), available at https://link.springer.com/article/10.1007/s11606-021-07237-y (last visited Jan. 31, 2024).
[77] *Id.*
[78] Hospital Price Transparency Enforcement Updates | CMS (Apr. 26, 2023) (last visited Jan. 17, 2024).

website. As part of the monitoring and enforcement efforts, CMS[79] is updating the enforcement process, with respect to areas that do not require rulemaking, with the following changes:

- **Requiring CAP completion deadline.** CMS will continue to require hospitals that are out of compliance with the hospital price transparency regulation to submit a CAP within 45 days from when CMS issues the CAP request. CMS will also now require hospitals to be in full compliance with the hospital price transparency regulation within 90 days from when CMS issues the CAP request, rather than allowing hospitals to propose a completion date for CMS approval which can vary. This change will standardize and streamline the timeframe and promote compliance at earlier dates.
- **Imposing CMPs earlier and automatically**. Currently, CMS does not impose automatic CMPs for failure to submit a requested CAP or failure to come into compliance within 90 days from when a CAP request is issued. CMS will now automatically impose a CMP on hospitals that fail to submit a CAP at the end of the 45-day CAP submission deadline. Before imposing the CMP, CMS will re-review the hospital's files to determine whether any of the violations cited in the CAP request continue to exist and, if violations are found, impose a CMP. For hospitals that submit a CAP by the 45-day CAP submission deadline but fail to comply with the terms of that CAP by the end of the 90-day deadline, CMS will re-review the hospital's files to determine whether any of the violations cited in the CAP request continue to exist and, if so, impose an automatic CMP.
- **Streamlining the compliance process.** For hospitals that have not made any attempt to satisfy the requirements (i.e., those that have not posted any machine-readable file or shoppable services list/price estimator tool), CMS will no longer issue a warning notice to the hospital and will instead immediately request that the hospital submit a CAP. Currently, CMS does not issue CAP requests without first issuing a warning notice.

The CMS notes that these enforcement updates will shorten the average time by which hospitals must come into compliance with the hospital price transparency requirements after a deficiency is identified to no more than 180 days, or 90 days for cases with no warning notice, and will complement future efforts.[80]

Federal Transparency in Coverage Requirements – Insurers and HMOs

On October 29, 2020, the federal departments of Health and Human Services, Labor, and Treasury finalized Transparency in Coverage regulations[81] imposing new transparency requirements on issuers of individual and group health insurance plans.

Central to the new regulations is a requirement for insurers and HMOs to provide an estimate of an insured's cost-sharing liability for covered items or services furnished by a particular provider. Under the final rule, health insurers and HMOs must disclose cost-sharing estimates at the request of an enrollee and publicly release negotiated rates for in-network providers, historical out-of-network allowed amounts and billed charges, and drug pricing information. The rule's

[79] *Hospital Price Transparency Enforcement Updates | CMS* (last visited Jan. 17, 2024).
[80] *Id.*
[81] Transparency in Coverage, 85 FR 73158 (November 12, 2020)(codified at 29 CFR Part 54, 29 CFR Part 2590, 45 CFR Part 147, and 45 CFR Part 158).

goal is to enable insured patients to estimate their out-of-pocket costs before receiving health care services, to encourage shopping and price competition among providers.[82]

Federal Oversight and Enforcement of Transparency in Coverage Requirements

The Transparency in Coverage Final Rules (TiC Rules) require non-grandfathered group health insurers and HMOs offering non-grandfathered group and individual health insurance coverage to make cost-sharing information available to insureds and subscribers through an internet-based self-service tool and in paper form, upon request.[83] This information must be made available for plan years (in the individual market, policy years) beginning on or after January 1, 2023, with respect to the 500 items and services identified by the Departments[84] in Table 1 of the preamble to the TiC Rules,[85] and with respect to all covered items and services, for plan or policy years beginning on or after January 1, 2024.[86]

The insurer or HMO must make available to an insured or subscriber upon request cost-sharing information for a discrete covered item or service by billing code or descriptive term, and generally must furnish it according to the insured's or subscriber's request.[87] Further, the TiC Rules require an insurer or subscriber to provide cost-sharing information for a covered item or service in connection with an in-network provider or providers, or an out-of-network allowed amount for a covered item or service provided by an out-of-network provider, according to the insured's or subscriber's request, permitting the individual to specify the information necessary for the insurer or HMO to provide meaningful cost-sharing liability information.[88]

For plans and issuers that are subject to CMS's enforcement authority and do not comply, CMS may take several enforcement actions, including: requiring corrective actions or imposing a civil money penalty up to $100 per day, adjusted annually under 45 CFR part 102, for each violation and for each individual affected by the violation.[89]

The Federal "No Surprises" Act

On December 27, 2020, Congress enacted the No Surprises Act as part of the Consolidated Appropriations Act of 2021.[90] The No Surprises Act includes a wide-range of provisions aimed

[82] Health Affairs Blog, *Trump Administration Finalizes Transparency Rule for Health Insurers, November 1, 2020, available at* https://www.healthaffairs.org/do/10.1377/hblog20201101.662872/full/ (last visited Jan. 23, 2024).
[83] 26 CFR 54.9815-2715A2(b); 29 CFR 2590.715-2715A2(b); and 45 CFR 147.211(b). The Consolidated Appropriations Act, 2021 imposed a largely duplicative requirement, and added a requirement that price comparison guidance also be provided by telephone, upon request. See also FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49 (Aug. 20, 2021), Q3, available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf and https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-49.pdf, and FAQs about Affordable Care Act Implementation Part 61 (cms.gov) (Sep 27, 2024) (last visited Jan.19, 2024).
[84] Department of Treasury, Department of Labor, and Department of Health and Human Services.
[85] 85 FR 72158, 72182-90 (Nov. 12, 2020).
[86] 26 CFR 54.9815-2715A2(c)(1); 29 CFR 2590.715-2715A2(c)(1); and 45 CFR 147.211(c)(1).
[87] In responding to an insured's or subscriber's request, the group health plan or health insurer may limit the number of providers with respect to which cost-sharing information for covered items and services is provided to no fewer than 20 providers per request. 26 CFR 54.9815-2715A2(b)(2)(ii); 29 CFR 2590.715-2715A2(b)(2)(ii); and 45 CFR 147.211(b)(2)(ii).
[88] 26 CFR 54.9815-2715A2(b)(1); 29 CFR 2590.715-2715A2(b)(1); and 45 CFR 147.211(b)(1).
[89] 45 CFR part 150, subpart B and C.
[90] Public Law 116-260. The No Surprises Act is found in Division BB of the Act.

at protecting patients from surprise billing practices and ensuring that patients have access to accurate information about the costs of care. Most sections of the Act go into effect on January 1, 2022, and the federal departments of Health and Human Services, Treasury, and Labor are tasked with issuing regulations and guidance to implement a number of the provisions.[91]

Federal No Surprises Act Requirements Relating to Estimates – Facilities

The No Surprises Act requires a health insurer or health maintenance organization (HMO) to generate an "advanced explanation of benefits" (AEOB) that combines information on charges provided by a hospital facility with patient-specific cost information provided by a policy or contract. The process is triggered when a patient schedules a service at a hospital facility or requests cost information on a specific set of services. A hospital facility must share a "good faith estimate" of the total expected charges for scheduled items or services, including any expected ancillary services, with a health insurer (if the patient is insured) or individual (if the patient is uninsured).[92]

Federal No Surprises Act Requirements of Health Insurers and HMOs

Under the No Surprises Act, once the "good faith estimate" has been shared with a patient's health insurer or HMO, then the insurer or HMO must then develop the AEOB. This personalized cost estimate must include the following:

- An indication of whether the facility participates in the patient's insurer's or HMO's network. If the facility is non-participating, information on how the patient can receive services from a participating provider;
- The good-faith estimate prepared by the hospital facility based on billing/diagnostic codes;
- A good-faith estimate of the amount to be covered by the health insurer or HMO;
- A good-faith estimate of the amount of the patient's out-of-pocket costs;
- A good-faith estimate of the accrued amounts already met by the patient towards any deductible or out-of-pocket maximum under the patient's policy or contract;
- A disclaimer indicating whether the services scheduled are subject to medical management techniques (e.g., medical necessity determinations, prior authorization, step therapy, etc.); and,
- A disclaimer that the information provided is only an estimate of costs and may be subject to change.[93]

Deferral of Federal Enforcement Related to the Good Faith Estimates and the AEOBs for Insured Individuals[94]

The Department of Health and Human Services issued regulations implementing Public Health Services Act (PHS Act) s. 2799B-6 related to good faith estimates for uninsured or self-pay individuals in interim final rulemaking that was published in the Federal Register on October 7, 2021, but deferred enforcement of the portion of PHS Act s. 2799B-6 related to good faith estimates for insured individuals who are seeking to have a claim submitted to insurer or HMO

[91] *Id.*
[92] Public Law 116-260, Division BB, Section 112.
[93] Public Law 116-260, Division BB, Section 111.
[94] 87 FR 56905.

for scheduled items or services.[95] In the preamble to that rule (and as stated in guidance issued by the Departments), the Departments also deferred enforcement of Code section 9816(f), ERISA section 716(f), and PHS Act section 2799A–1(f) related to the requirement that plans and issuers provide an AEOB.[96]

The decision to defer enforcement in October 2021 was made in response to stakeholder requests that the Departments first establish standards for the data transfer from providers and facilities to plans and issuers, and give plans, issuers, providers, and facilities enough time to build the infrastructure necessary to support the transfers. The Departments agreed that compliance with these sections was likely not possible by January 1, 2022, and indicated an intent to undertake notice and comment rulemaking in the future to implement these provisions, including establishing appropriate data transfer standards. In September 2022, issued a Request for Information relating to the AEOB and the GFE for covered individuals. In the September 2022 Request for Information, noticed in the Federal Register, it was stated that HHS is deferring enforcement of the requirement that providers and facilities must provide a GFE to plans and issuers for covered individuals enrolled in a health plan or coverage and seeking to have a claim submitted for scheduled (or requested) items or services to their plan or coverage, and the Departments are deferring enforcement of the requirement that plans and issuers must provide these covered individuals with an AEOB until the notice and comment rulemaking, including the establishment of appropriate data transfer standards is accomplished.

III. Effect of Proposed Changes:

Medical Debt Protections for Consumers

SB 1640 amends and creates several sections of law in order to establish new protections for consumers who owe medical debt to a hospital or ambulatory surgical center (ASC).

Section 1 amends s. 95.11, F.S., to establish that the statute of limitations for an action to collect medical debt for services rendered by a hospital or ASC licensed under ch. 395, F.S., is three years, running from the date on which the facility completes written notification of the medical debt or the date on which the facility refers the medical debt to a third-party for collection, whichever is later. Medical debt is currently subject to a five-year statute of limitations under s. 95.11(2)(b), F.S.

Section 2 creates s. 222.26, F.S., to exempt from attachment, garnishment or other legal process in an action on hospital medical debt:

- A debtor's interest, not to exceed $10,000 in value, in a single motor vehicle. Currently, the exempt interest is $1,000.

[95] Requirements Related to Surprise Billing; Part II, 86 FR 55980, 55983 (October 7, 2021), available at *https://www.federalregister.gov/documents/2021/10/07/2021-21441/requirements-related-to-surprise-billing-part-ii*. (last visited Jan. 24, 2024).

[96] FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49 (August 20, 2021), Q6, available at *https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-49.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQs-Part-49.pdf*. (last visited Jan. 29, 2024).

- A debtor's interest in personal property, not to exceed $10,000 in value, if the debtor does not claim or receive the benefits of a homestead exemption. Currently, the exempt interest is $1,000.

Section 4 creates s. 395.3011, F.S., to prohibit a hospital or ASC from engaging in certain billing and collection activities relating to medical debt. The bill defines "extraordinary collection actions" to mean any of the following actions taken by a licensed facility against an individual in relation to obtaining payment of a bill for care covered under the facility's financial assistance policy:

- Selling the individual's debt to another party.
- Reporting adverse information about the individual to consumer credit reporting agencies.
- Deferring, denying, or requiring a payment before providing medically necessary care because of the individual's nonpayment of one or more bills for previously provided care covered under the facility's financial assistance policy.
- Actions that require a legal or judicial process, including, but not limited to:
  - Placing a lien on the individual's property;
  - Foreclosing on the individual's real property;
  - Attaching or seizing the individual's bank account or any other personal property;
  - Commencing a civil action against the individual;
  - Causing the individual's arrest; or
  - Garnishing the individual's wages.

The bill prohibits a hospital or ASC from engaging in an extraordinary collection action to obtain payment for services in the following circumstances:

- Before the facility has made reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy for the care provided and, if eligible, before a decision is made by the facility on the patient's application for such financial assistance;
- Before the facility has provided the individual with an itemized statement or bill;
- During an ongoing grievance process as described in s. 395.301(6), F.S., or an ongoing appeal of a claim adjudication;
- Before billing any applicable insurer or HMO and allowing the insurer or HMO to adjudicate a claim;
- For 30 days after notifying the patient in writing, by certified mail, or by other traceable delivery method, that a collection action will commence absent additional action by the patient; or
- While the individual:
  - Negotiates in good faith the final amount of a bill for services rendered; or
  - Complies with all terms of a payment plan with the facility.

Section 3 amends s. 395.301, F.S., to require each hospital and ASC to establish an internal process for reviewing and responding to grievances from patients. The process must allow a patient to dispute charges that appear on the patient's itemized statement or bill and the facility must prominently post on its website and print on each itemized statement or bill, in bold print, the instructions for initiating, and the direct contact information required to initiate, a grievance.

The facility must respond to a patient's grievance within seven business days after the patient formally files the grievance.

Price Transparency Provisions Relating to Hospitals and ASCs

Section 3 amends s. 395.301, F.S., to require a hospital or an ASC to post on its website a consumer-friendly list of standard charges for at least 300 shoppable health care services. If the facility posts less than 300 services, it must include each service it provides. The bill defines:

- "Shoppable health care service" to mean a service that can be scheduled by a health care consumer in advance. The term includes, but is not limited to, the services described in s. 627.6387(2)(e), F.S.,[97] and any services defined in regulations or guidance issued by the U.S. Department of Health and Human Services.
- "Standard charge" to mean the same as that term is defined in regulations or guidance issued by the U.S. Department of Health and Human Services for purposes of hospital price transparency.

The bill also amends provisions requiring a hospital or ASC to provide a good faith estimate for nonemergency medical services to a patient. The bill requires this estimate to be provided to the patient or prospective patient upon scheduling the medical service, rather than within seven days of receiving the request for the service as under current law, and also requires the facility to provide the estimate to the patient's health insurer[98] and to the patient at least three business days before the service but no more than one business day after the service is scheduled, or three business days after the service is scheduled if the service is scheduled at least ten days in advance.

The bill requires a facility to disclose to the patient whether a cost sharing obligation exceeds the charge that applies to an individual who pays cash for the same service in the absence of insurance coverage. Failure to comply with this disclosure relating to cash price may result in a fine not to exceed $500.

The bill removes current-law provisions that require the facility to take action to educate the public that such estimates are available upon request and that specify that the estimate does not preclude the actual charges from exceeding the estimate.

Advanced Explanation of Benefits Required of Insurers and HMOs

Section 6 creates s. 627.445, F.S., to require a health insurer to prepare an "advanced explanation of benefits" (AEOB) after receiving an estimate from a hospital or ASC. The bill defines "health insurer" as a health insurer issuing individual or group coverage or a HMO issuing coverage through an individual or a group contract. The AEOB must be provided to the patient no later than one business day after the insurer receives the estimate or no later than three

[97] These services include clinical laboratory services, infusion therapy, inpatient and outpatient surgical procedures, obstetrical and gynecological services, inpatient and outpatient nonsurgical diagnostic tests and procedures, physical and occupational therapy services, radiology and imaging services, prescription drugs, services provided through telehealth, and any additional services published by the Agency for Health Care Administration that have the most significant price variation pursuant to s. 408.05(3)(m).
[98] As defined in s. 627.445(1), F.S.

business days for services scheduled at least ten business days in advance. At a minimum, the AEOB must include detailed coverage and cost-sharing information pursuant to the federal No Surprises Act.

Disclosure of Discounted Cash Prices

Section 7 creates s. 627.447, F.S., to provide that an insurer may not prohibit a provider from disclosing to an insured the option to pay the provider's discounted cash price for services. The term, "discounted cash price," means:

- With respect to a hospital facility, the term has the same meaning as provided in 45 C.F.R. s. 180.20. The term does not include the amount charged to an individual pursuant to a facility's financial assistance policy.
- With respect to a provider that is not a hospital, the term means the charge that is applied to an individual who paid for a health care service without filing an insurance claim.

Shared Savings Incentive Program (Sections 8-10)

These sections amend ss. 627.6387, 627.6648, and 641.31076, F.S. to specify that a health insurer or health maintenance organization must count a shared saving incentive program as a medical expense for rate development and rate filing purposes.[99]

The program is revised to provide that it is mandatory for an insurer or HMO writing individual policies or contracts, respectively. The program remains voluntary and optional for insureds.

Direct Health Care Agreements

Section 5 amends s. 624.27, F.S., to expand the definition of health care provider that may participate in a direct health care agreement that is exempt from the insurance code to include a health care provider licensed under ch. 490 (practice of psychology) or ch. 491, F.S. (clinical, counseling, and psychotherapy services). Currently, physicians licensed under chapter 458, osteopaths licensed under chapter 459, chiropractors licensed under chapter 460, podiatric physicians licensed under chapter 461, nurses and certified nursing assistants licensed under chapter 464, or dentists licensed under chapter 466, or a health care group practice, who provides health care services to patients are authorized to participate in direct health care agreements. Direct health care agreements are contracts between providers and a patient that are exempt from the insurance code if the agreement is in writing, discloses the scope of the services, duration of the agreement, monthly fees, and any fees for health care services not covered by the monthly fee. Further, the agreement must offer a refund to the patient of monthly fees paid in advance if the provider ceases to offer the services for any reason.

Conforming Changes (Sections 11-15)

[99] Medicare and Medicaid Programs: CY 2020 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates. Price Transparency Requirements for Hospitals to Make Standard Charges Public, 84 FR 65524 (November 27, 2019) (codified at 45 CFR Part 180).

The bill amends ss. 475.01, 475.611, 768.28, and 787.061, F.S., to make conforming cross-reference changes.

Deferral of Effective Date of Specified Provisions (16)

The bill defers the implementation of the changes made to ss. 395.001 and 627.446, F.S., as it relates to ambulatory surgical centers, as defined in s. 395.002, F.S., until January 1, 2026.

Effective Date (Section 17)

The bill provides an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article II, Section 3, of the Florida Constitution has been interpreted by Florida courts to prohibit the Legislature from delegating its legislative power to others. Under this non-delegation principle, Florida courts have held that the Legislature may enact laws that adopt federal statutes or other federal regulations in existence and in effect at the time the Legislature acts; however, if the Legislature incorporates into a Florida statute a future federal act or regulation, courts have held that such incorporation constitutes an unconstitutional delegation of legislative power.

However, when a statute incorporates a federal law or regulation by reference, in order to avoid holding the subject statute unconstitutional, Florida courts generally interpret the statute as incorporating only the federal law or regulation in effect on the date of the Legislature's action to enact the Florida law, reasoning that the Legislature is presumed to have intended to enact a valid and constitutional law.

Lines 166-171 of the bill define the terms "shoppable health care service" and "standard charge" with reference to how those terms are defined in "regulations or guidance issued

by the United States Department of Health and Human Services." Considering that the bill does not specify that it is referring to such definitions as they exist at a specific date prior to the enactment of the bill, these references may be considered an unauthorized delegation of legislative powers if interpreted to make reference to future revisions of those definitions in federal law and may be interpreted to maintain the meaning of how those federal definitions stand on the date the bill becomes effective instead of incorporating such future revisions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1640 may have an indeterminate positive fiscal impact on consumers of health care services at hospitals and ASCs by providing additional price information prior to the consumer obtaining a health care service and through protecting the consumer against certain debt collection practices for medical debt.

The bill may have an indeterminate negative fiscal impact on hospitals, ASCs, health insurers, and HMOs related to complying with the new state requirements in the bill and on hospitals and ASCs that may not be able to collect on medical debt that they may have collected prior to the passage of the bill.

C. Government Sector Impact:

The Office of the State Courts Administrator

The Office of the State Courts Administrator reports that the State Courts System receives $195 in filing fees for each civil proceeding, and those funds are deposited into the State Courts Revenue Trust Fund (SCRTF). To the extent that the number of such proceedings will be reduced by the bill's prohibition against hospitals and ASCs pursuing "extraordinary collection activities," combined with the bill's other limitations related to the collection of medical debt, the bill will negatively impact deposits into the SCRTF. The extent of this impact is indeterminate.[100]

Agency for Health Care Administration (Agency)

The fiscal impact on Agency is indeterminate at this time. The bill increases the regulation of hospitals and ASCs, both of which are currently licensed and regulated by the Agency.

[100] Office of the State Courts Administrator, *2024 Judicial Impact Statement: SB 1640* (Jan. 24, 2024) (on file with the Senate Committee on Banking and Insurance).

Office of Insurance Regulation[101]

The OIR provided a fiscal impact related to implementing a mandatory shared savings program for insurers and HMOs to offer insureds and subscribers. Implementation of the bill would require all health insurers, and HMOs to file new forms and annually thereafter file forms with the office for review as part of the contract, and submit annual rate filings for review. Since only one insurer currently offers this type of program, this would require additional work and training for OIR staff. To ensure the products are thoroughly reviewed and readily available in the market, OIR would need $150,000 in rate and $193,000 in Salaries and Benefits to upgrade, recruit, and fill specific positions to accommodate the workload.

VI. Technical Deficiencies:

Lines 182-184 of the bill require a hospital or ambulatory surgical center (ASC) to provide the good faith estimate to a patient "upon scheduling a medical service." However, lines 191-192 require the facility to provide the estimate to the patient "no later than one business day after the service is scheduled" (or three business days in certain scenarios). As such, it is unclear when a facility is required to provide the estimate to the patient or whether the facility must provide the estimate to the patient twice.

VII. Related Issues:

Line 190 requires the good faith estimate to be provided by the hospital or ambulatory surgical center (ASC) to the health insurer and to the patient "at least 3 business days before a service is to be furnished." It may be impossible for a facility to meet this deadline if a service is to be furnished less than three days after it is scheduled and may preclude services from being furnished less than three days after they are scheduled.

The change to the statute of limitations to collect medical debt may result in fewer actions being barred by the statute of limitations as hospitals and ASCs could determine when the statute of limitations begins to run by delaying written notice of the debt or transfer medical debt to collection agencies.[102]

Many insurers and HMOs have implemented value-based value based purchasing or alternative payment methodologies that are tied to certain insurer-specific quality improvement or outcome strategies. Often such payment methodologies bundle services. It is unclear whether the information relating to the shared savings program includes outcome measures that a consumer may use to also evaluate the quality of care delivered by a provider.

VIII. Statutes Affected:

This bill amends sections 95.11, 395.301, 624.27, 627.447, 627.6387, 627.6648, 641.31076, 475.01, 475.611, 517.191, 768.28, and 787.061 of the Florida Statutes.
This bill creates sections 226.26, 395.3011, and 627.446, of the Florida Statutes.

[101] Office of Insurance Regulation, 2024 SB 1640 Analysis. On file with Senate Banking and Insurance Committee.
[102] Supra at 98.

IX. Additional Information:

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

CS by Fiscal Policy on February 27, 2024:
The committee substitute provides that the changes made to ss. 395.001 and 627.446, F.S., do not apply to ambulatory surgical centers until January 1, 2026.

B. Amendments:

None.

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

233008

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Collins) recommended the following:

Senate Amendment (with title amendment)

Between lines 527 and 528
insert:

Section 16. The changes made by this act to ss. 395.301 and 627.446, Florida Statutes, do not apply to ambulatory surgical centers as defined in s. 395.002, Florida Statutes, until January 1, 2026.

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

233008

And the title is amended as follows:

Delete line 72

and insert:

references; providing applicability; providing an effective date.

By Senator Collins

14-01322B-24 20241640__

A bill to be entitled

An act relating to payments for health care services; amending s. 95.11, F.S.; establishing a 3-year statute of limitations for an action to collect medical debt for services rendered by certain health care facilities; creating s. 222.26, F.S.; providing additional personal property exemptions from legal process for medical debts resulting from services provided in certain licensed facilities; amending s. 395.301, F.S.; requiring certain licensed facilities to post on their respective websites a consumer-friendly list of standard charges for a minimum number of shoppable health care services; requiring the facilities to provide such information in an alternative format as requested by the patient; defining terms; requiring licensed facilities to provide a good faith estimate of reasonably anticipated charges to the patient's health insurer and the patient, prospective patient, or patient's legal guardian within specified timeframes; requiring such facilities to provide the estimate in the manner selected by the patient, prospective patient, or patient's legal guardian; revising notification requirements for such estimates to include notification of a patient's legal guardian, if any; deleting the requirement that licensed facilities educate the public on the availability of such estimates upon request; revising a penalty; deleting construction; requiring licensed facilities to

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14-01322B-24 20241640__

establish an internal grievance process for patients to submit grievances, including to dispute charges; requiring licensed facilities to make available on their respective websites information necessary for initiating a grievance; requiring licensed facilities to respond to a patient grievance within a specified timeframe; requiring licensed facilities to disclose certain information to patients, prospective patients, and patients' legal guardians, as applicable; providing a civil penalty; creating s. 395.3011, F.S.; defining the term "extraordinary collection action"; prohibiting licensed facilities from engaging in extraordinary collection actions against individuals to obtain payment for services under specified circumstances; amending s. 624.27, F.S.; revising the definition of the term "health care provider" for purposes of direct health care agreements; creating s. 627.446, F.S.; defining the term "health insurer"; requiring health insurers to provide an insured with an advanced explanation of benefits after receiving a patient estimate from a facility for scheduled services; providing requirements for the advanced explanation of benefits; creating s. 627.447, F.S.; prohibiting health insurers from prohibiting providers from disclosing certain information to an insured; defining the term "discounted cash price"; amending s. 627.6387, F.S.; revising the definition of the terms "health insurer" and "shared savings incentive" to conform to changes made by the act; requiring, rather

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than authorizing, health insurers to offer a shared savings incentive program under certain circumstances; requiring that a certain notification required of health insurers include specified information; providing that a shared savings incentive offered by a health insurer constitutes a medical expense for purposes of rate development and rate filing; amending ss. 627.6648 and 641.31076, F.S.; providing that a shared savings incentive offered by a health insurer or health maintenance organization, respectively, constitutes a medical expense for rate development and rate filing purposes; amending ss. 475.01, 475.611, 517.191, 768.28, and 787.061, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (4) through (12) of section 95.11, Florida Statutes, are redesignated as subsections (5) through (13), respectively, a new subsection (4) is added to that section, and paragraph (b) of subsection (2), paragraph (n) of subsection (3), paragraphs (f) and (g) of present subsection (5), and present subsection (10) of that section are amended, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation,

or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (6)(e) ~~(5)(e)~~, s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an action for a deficiency judgment governed by paragraph (6)(h) ~~(5)(h)~~.

(3) WITHIN FOUR YEARS.—

(n) An action for assault, battery, false arrest, malicious prosecution, malicious interference, false imprisonment, or any other intentional tort, except as provided in subsections ~~(4),~~ (5), (6), and (8) ~~(7)~~.

(4) WITHIN THREE YEARS.—An action to collect medical debt for services rendered by a facility licensed under chapter 395, provided that the period of limitations runs from the date on which the facility completes written notification of the medical debt, either through the mail or via electronic means with evidence of receipt, in the delivery manner selected by the affected patient or the patient's legal representative or the date on which the facility refers the medical debt to a third party for collection, whichever date is later.

(6) ~~(5)~~ WITHIN ONE YEAR.—

(f) Except for actions described in subsection (9) ~~(8)~~, a petition for extraordinary writ, other than a petition challenging a criminal conviction, filed by or on behalf of a prisoner as defined in s. 57.085.

(g) Except for actions described in subsection (9) ~~(8)~~, an action brought by or on behalf of a prisoner, as defined in s. 57.085, relating to the conditions of the prisoner's confinement.

(11)~~(10)~~ FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph (5)(e) ~~(4)(c)~~, an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s. 782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

Section 2. Section 222.26, Florida Statutes, is created to read:

222.26 Additional exemptions from legal process concerning medical debt.—If a debt is owed for medical services provided by a facility licensed under chapter 395, the following property is exempt from attachment, garnishment, or other legal process in an action on such debt:

(1) A debtor's interest, not to exceed $10,000 in value, in a single motor vehicle as defined in s. 320.01(1).

(2) A debtor's interest in personal property, not to exceed $10,000 in value, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution.

Section 3. Present paragraphs (b), (c), and (d) of subsection (1) of section 395.301, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, present subsection (6) is redesignated as subsection (8), a new paragraph (b) is added to subsection (1), a new subsection (6) and subsection (7) are added to that section, and present

paragraph (b) of subsection (1) of that section is amended, to read:

395.301 Price transparency; itemized patient statement or bill; patient admission status notification.—

(1) A facility licensed under this chapter shall provide timely and accurate financial information and quality of service measures to patients and prospective patients of the facility, or to patients' survivors or legal guardians, as appropriate. Such information shall be provided in accordance with this section and rules adopted by the agency pursuant to this chapter and s. 408.05. Licensed facilities operating exclusively as state facilities are exempt from this subsection.

(b) Each licensed facility shall post on its website a consumer-friendly list of standard charges for at least 300 shoppable health care services. If a facility provides fewer than 300 distinct shoppable health care services, it must make available on its website the standard charges for each service it provides. A facility shall provide the information in an alternative format as requested by the patient. As used in this paragraph, the term:

1. "Shoppable health care service" means a service that can be scheduled by a health care consumer in advance. The term includes, but is not limited to, the services described in s. 627.6387(2)(e) and any services defined in regulations or guidance issued by the United States Department of Health and Human Services.

2. "Standard charge" has the same meaning as the definition of that term in regulations or guidance issued by the United States Department of Health and Human Services for purposes of

hospital price transparency.

(c)1.~~(b)1.~~ ~~Upon request, and~~ Before providing any nonemergency medical services, each licensed facility shall provide in writing or by electronic means, in the manner requested by the patient, prospective patient, or patient's legal guardian, a good faith estimate of reasonably anticipated charges by the facility for the treatment of the patient's or prospective patient's specific condition. Such estimate must be provided to the patient, prospective patient, or patient's legal guardian upon scheduling a medical service. The facility ~~must provide the estimate to the patient or prospective patient within 7 business days after the receipt of the request and~~ is not required to adjust the estimate for any potential insurance coverage. The facility shall provide the estimate to the patient's health insurer, as defined in s. 627.446(1), and the patient or the patient's legal guardian at least 3 business days before a service is to be furnished, but no later than 1 business day after the service is scheduled or, in the case of a service scheduled at least 10 business days in advance, no later than 3 business days after the service is scheduled. The estimate may be based on the descriptive service bundles developed by the agency under s. 408.05(3)(c) unless the patient, ~~or~~ prospective patient, or patient's legal guardian requests a more personalized and specific estimate that accounts for the specific condition and characteristics of the patient or prospective patient. The facility shall inform the patient, ~~or~~ prospective patient, or patient's legal guardian that he or she may contact the patient's ~~his or her~~ health insurer ~~or health maintenance organization~~ for additional information concerning

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cost-sharing responsibilities.

2. In the estimate, the facility shall provide to the patient, ~~or~~ prospective patient, or patient's legal guardian information delivered in the patient's preferred format on the facility's financial assistance policy, including the application process, payment plans, and discounts and the facility's charity care policy and collection procedures.

3. The estimate shall clearly identify any facility fees and, if applicable, include a statement notifying the patient, ~~or~~ prospective patient, or patient's legal guardian that a facility fee is included in the estimate, the purpose of the fee, and that the patient may pay less for the procedure or service at another facility or in another health care setting.

4. ~~Upon request,~~ The facility shall notify the patient, ~~or~~ prospective patient, or patient's legal guardian of any revision to the estimate.

5. In the estimate, the facility must notify the patient, ~~or~~ prospective patient, or patient's legal guardian that services may be provided in the health care facility by the facility as well as by other health care providers that may separately bill the patient, if applicable.

6. ~~The facility shall take action to educate the public that such estimates are available upon request.~~

~~7.~~ Failure to timely provide the estimate pursuant to this paragraph shall result in a daily fine of $1,000 until the estimate is provided to the patient, ~~or~~ prospective patient, or patient's legal guardian and the health insurer. The total fine per patient estimate may not exceed $10,000.

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~~The provision of an estimate does not preclude the actual charges from exceeding the estimate.~~

(6) Each facility shall establish an internal process for reviewing and responding to grievances from patients. Such process must allow patients to dispute charges that appear on the patient's itemized statement or bill. The facility shall prominently post on its website and indicate in bold print on each itemized statement or bill the instructions for initiating a grievance and the direct contact information required to initiate the grievance process. The facility shall provide an initial response to a patient grievance within 7 business days after the patient formally files a grievance disputing all or a portion of an itemized statement or bill.

(7) Each licensed facility shall disclose to a patient, prospective patient, or a patient's legal guardian whether a cost-sharing obligation for a particular covered health care service or item exceeds the charge that applies to an individual who pays cash or the cash equivalent for the same health care service or item in the absence of health insurance coverage. The facility's failure to provide a disclosure compliant with this section may result in a fine not to exceed $500 per incident.

Section 4. Section 395.3011, Florida Statutes, is created to read:

395.3011 Billing and collection activities.—

(1) As used in this section, the term "extraordinary collection action" means any of the following actions taken by a licensed facility against an individual in relation to obtaining payment of a bill for care covered under the facility's financial assistance policy:

(a) Selling the individual's debt to another party.

(b) Reporting adverse information about the individual to consumer credit reporting agencies or credit bureaus.

(c) Deferring, denying, or requiring a payment before providing medically necessary care because of the individual's nonpayment of one or more bills for previously provided care covered under the facility's financial assistance policy.

(d) Actions that require a legal or judicial process, including, but not limited to:

1. Placing a lien on the individual's property;

2. Foreclosing on the individual's real property;

3. Attaching or seizing the individual's bank account or any other personal property;

4. Commencing a civil action against the individual;

5. Causing the individual's arrest; or

6. Garnishing the individual's wages.

(2) A facility may not engage in an extraordinary collection action against an individual to obtain payment for services:

(a) Before the facility has made reasonable efforts to determine whether the individual is eligible for assistance under its financial assistance policy for the care provided and, if eligible, before a decision is made by the facility on the patient's application for such financial assistance.

(b) Before the facility has provided the individual with an itemized statement or bill.

(c) During an ongoing grievance process as described in s. 395.301(6) or an ongoing appeal of a claim adjudication.

(d) Before billing any applicable insurer and allowing the

insurer to adjudicate a claim.

(e) For 30 calendar days after notifying the patient in writing, by certified mail or by other traceable delivery method, that a collection action will commence absent additional action by the patient.

(f) While the individual:

1. Negotiates in good faith the final amount of a bill for services rendered; or

2. Complies with all terms of a payment plan with the facility.

Section 5. Paragraph (b) of subsection (1) of section 624.27, Florida Statutes, is amended to read:

624.27 Direct health care agreements; exemption from code.—

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

(b) "Health care provider" means a health care provider licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, ~~or~~ chapter 466, chapter 490, or chapter 491, or a health care group practice, who provides health care services to patients.

Section 6. Section 627.446, Florida Statutes, is created to read:

627.446 Advanced explanation of benefits.—

(1) As used in this section, the term "health insurer" means an authorized insurer issuing individual or group coverage under this chapter or a health maintenance organization issuing coverage through an individual or a group contract under chapter 641.

(2) Each health insurer shall prepare an advanced explanation of benefits upon receiving a patient estimate from a

facility pursuant to s. 395.301(1). The health insurer must provide the advanced explanation of benefits to the insured no later than 1 business day after receiving the patient estimate from the facility or, in the case of a service scheduled at least 10 business days in advance, no later than 3 business days after receiving such estimate.

(3) At a minimum, the advanced explanation of benefits must include detailed coverage and cost-sharing information pursuant to 42 U.S.C. s. 300gg-111 (2020) and the regulations and guidance adopted thereunder.

Section 7. Section 627.447, Florida Statutes, is created to read:

627.447 Disclosure of discounted cash prices.—A health insurer may not prohibit a provider from disclosing to an insured the option to pay the provider's discounted cash price for health care services. For purposes of this section, the term "discounted cash price" has the following meanings:

(1) With respect to a hospital facility, the term has the same meaning as provided in 45 C.F.R. s. 180.20. The term does not include the amount charged to an individual pursuant to a facility's financial assistance policy.

(2) With respect to a provider that is not a hospital, the term means the charge that is applied to an individual who paid for a health care service without filing an insurance claim.

Section 8. Paragraphs (b) and (c) of subsection (2), subsection (3), and paragraph (a) of subsection (4) of section 627.6387, Florida Statutes, are amended to read:

627.6387 Shared savings incentive program.—

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

(b) "Health insurer" means an authorized insurer offering health insurance as defined in s. 627.446 ~~s. 624.603~~.

(c) "Shared savings incentive" means a voluntary and optional financial incentive that a health insurer provides ~~may provide~~ to an insured for choosing certain shoppable health care services under a shared savings incentive program, which ~~and~~ may include, but is not limited to, the incentives described in s. 626.9541(4)(a).

(3) A health insurer must ~~may~~ offer a shared savings incentive program to provide incentives to an insured when the insured obtains a shoppable health care service from the health insurer's shared savings list. An insured may not be required to participate in a shared savings incentive program. A health insurer ~~that offers a shared savings incentive program~~ must:

(a) Establish the program as a component part of the policy or certificate of insurance provided by the health insurer and notify the insureds and the office at least 30 days before program termination.

(b) File a description of the program on a form prescribed by commission rule. The office must review the filing and determine whether the shared savings incentive program complies with this section.

(c) Notify an insured annually and at the time of renewal, and an applicant for insurance at the time of enrollment, of the availability of the shared savings incentive program and the procedure to participate in the program and that participation by the insured is voluntary and optional.

(d) Publish on a web page easily accessible to insureds and to applicants for insurance a list of shoppable health care

services and health care providers and the shared savings incentive amount applicable for each service. A shared savings incentive may not be less than 25 percent of the savings generated by the insured's participation in any shared savings incentive offered by the health insurer. The baseline for the savings calculation is the average in-network amount paid for that service in the most recent 12-month period or some other methodology established by the health insurer and approved by the office.

(e) At least quarterly, credit or deposit the shared savings incentive amount to the insured's account as a return or reduction in premium, or credit the shared savings incentive amount to the insured's flexible spending account, health savings account, or health reimbursement account, or reward the insured directly with cash or a cash equivalent.

(f) Submit an annual report to the office within 90 business days after the close of each plan year. At a minimum, the report must include the following information:

1. The number of insureds who participated in the program during the plan year and the number of instances of participation.

2. The total cost of services provided as a part of the program.

3. The total value of the shared savings incentive payments made to insureds participating in the program and the values distributed as premium reductions, credits to flexible spending accounts, credits to health savings accounts, or credits to health reimbursement accounts.

4. An inventory of the shoppable health care services

offered by the health insurer.

(4)(a) A shared savings incentive offered by a health insurer in accordance with this section:

1. Is not an administrative expense for rate development or rate filing purposes and shall be counted as a medical expense for such purposes.

2. Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541 and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

Section 9. Paragraph (a) of subsection (4) of section 627.6648, Florida Statutes, is amended to read:

627.6648 Shared savings incentive program.—

(4)(a) A shared savings incentive offered by a health insurer in accordance with this section:

1. Is not an administrative expense for rate development or rate filing purposes and shall be counted as a medical expense for such purposes.

2. Does not constitute an unfair method of competition or an unfair or deceptive act or practice under s. 626.9541 and is presumed to be appropriate unless credible data clearly demonstrates otherwise.

Section 10. Paragraph (a) of subsection (4) of section 641.31076, Florida Statutes, is amended to read:

641.31076 Shared savings incentive program.—

(4) A shared savings incentive offered by a health maintenance organization in accordance with this section:

(a) Is not an administrative expense for rate development or rate filing purposes and shall be counted as a medical

expense for such purposes.

Section 11. Paragraphs (a) and (j) of subsection (1) of section 475.01, Florida Statutes, are amended to read:

475.01 Definitions.—

(1) As used in this part:

(a) "Broker" means a person who, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents, or offers, attempts or agrees to appraise, auction, or negotiate the sale, exchange, purchase, or rental of business enterprises or business opportunities or any real property or any interest in or concerning the same, including mineral rights or leases, or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing, or renting business enterprises or business opportunities or real property of others or interests therein, including mineral rights, or who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another, or leases, or interest therein, including mineral rights, or who directs or assists in the procuring of prospects or in the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who receives, expects, or is promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who advertise rental property

information or lists. A broker renders a professional service and is a professional within the meaning of s. 95.11(5)(b) ~~s. 95.11(4)(b)~~. Where the term "appraise" or "appraising" appears in the definition of the term "broker," it specifically excludes those appraisal services which must be performed only by a state-licensed or state-certified appraiser, and those appraisal services which may be performed by a registered trainee appraiser as defined in part II. The term "broker" also includes any person who is a general partner, officer, or director of a partnership or corporation which acts as a broker. The term "broker" also includes any person or entity who undertakes to list or sell one or more timeshare periods per year in one or more timeshare plans on behalf of any number of persons, except as provided in ss. 475.011 and 721.20.

(j) "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. A sales associate renders a professional service and is a professional within the meaning of s. 95.11(5)(b) ~~s. 95.11(4)(b)~~.

Section 12. Paragraph (h) of subsection (1) of section 475.611, Florida Statutes, is amended to read:

475.611 Definitions.—

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

(h) "Appraiser" means any person who is a registered trainee real estate appraiser, a licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(5)(b) ~~s. 95.11(4)(b)~~.

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

Section 13. Subsection (7) of section 517.191, Florida Statutes, is amended to read:

517.191 Injunction to restrain violations; civil penalties; enforcement by Attorney General.—

(7) Notwithstanding s. 95.11(5)(f) ~~s. 95.11(4)(f)~~, an enforcement action brought under this section based on a violation of any provision of this chapter or any rule or order issued under this chapter shall be brought within 6 years after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 8 years after the date such violation occurred.

Section 14. Subsection (14) of section 768.28, Florida Statutes, is amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in s. 768.31(4), and an action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions in s. 95.11(5) ~~s. 95.11(4)~~.

Section 15. Subsection (4) of section 787.061, Florida

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

Statutes, is amended to read:

787.061 Civil actions by victims of human trafficking.—

(4) STATUTE OF LIMITATIONS.—The statute of limitations as specified in s. 95.11(8) or (10) ~~s. 95.11(7) or (9)~~, as applicable, governs an action brought under this section.

Section 16. This act shall take effect October 1, 2024.

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

1640
Bill Number or Topic

233008
Amendment Barcode (if applicable)

Name Robert Haen - Center One Surgery Center Phone 904-652-2311

Address 10473 Centurion Pkwy N #101 Email RHAEN@CenterOneSC.com
Street

Jacksonville FL 32256
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

FISCAL
Committee

1640
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jessica Brasson

Phone 561 815 2881

Address 12031 Corozo
Street

Email JBrasson@gmail.com

PBG FL 33418
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1656
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Criminal Justice; and Senator Martin
SUBJECT:	Child Exploitation Offenses
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	**Favorable**
2.	Atchley	Harkness	ACJ	**Fav/CS**
3.	Parker	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1656 creates s. 800.045, F.S., to provide that a person 18 years of age or older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of enticing such child to engage in any unlawful sexual behavior with that person or the exploitation of such child for human trafficking as provided in s. 787.06, F.S., commits the offense of lewd or lascivious grooming.

The bill provides that a person 18 years of age or older who commits lewd or lascivious grooming commits a third degree felony,[1] ranked as a Level 3 in the offense severity ranking chart.

[1] A third degree felony is punishable by a term of imprisonment not exceeding 5 years, as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill defines the terms "child,"[2] "inappropriate communication or conduct,"[3] "sexual activity,"[4] "sexual conduct,"[5] "sexual performance,"[6] and "unlawful sexual behavior."[7]

The bill amends s. 921.0022, F.S., increasing ranking levels of specified child exploitation offenses on the offense severity ranking chart (OSRC) of the Criminal Punishment Code.

This bill may have a positive insignificant prison bed impact (increase of 10 or fewer beds). See Section V., Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Grooming

Child sexual abuse is often effectuated following a period of 'grooming' and the sexualization of the relationship.[8] "Grooming" refers to deliberate actions taken by a defendant to expose a child to sexual material; the ultimate goal of grooming is the formation of an emotional connection with the child and a reduction of the child's inhibitions in order to prepare the child for sexual activity.[9]

During the desensitization phase the perpetrator typically introduces sexual content disguised as jokes or discussions, or through exposure to pornography or other explicit material,[10] and utilizes frequent non-sexual touch to desensitize the victim to physical contact. Post-abuse, the offender may engage in maintenance strategies in order to facilitate future sexual abuse and to prevent disclosure.[11]

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[2] "Child" means a person less than 16 years of age.
[3] "Inappropriate communication or conduct" means any verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.
[4] "Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1), F.S.
[5] "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." Section 847.001(19), F.S.
[6] "Sexual performance" means any performance or part thereof which includes sexual conduct by a child. Section 847.071(1)(m), F.S.
[7] "Unlawful sexual behavior" means any unlawful sexual activity, unlawful sexual conduct, or unlawful sexual performance.
[8] State v. Brown, 299 So.3d 561 (5th DCA 2020).
[9] United States v. Chambers, 642 F.3d 588, 593 (7th Cir. 2011).
[10] Helping Survivors, Sexual Grooming, https://helpingsurvivors.org/grooming/ (last visited February 27, 2024).
[11] Psychology Today, How to Recognize the Sexual Grooming of a Minor, (July 7, 2023) https://www.psychologytoday.com/us/blog/protecting-children-from-sexual-abuse/202010/how-to-recognize-the-sexual-grooming-of-a-minor (last visited February 27, 2024).

Exploitation of Children

Lewd or Lascivious Offenses

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.[12,13]

Neither the victim's lack of chastity nor the victim's consent is a defense to lewd or lascivious offenses. Additionally, the perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense.[14,15]

Lewd or Lascivious Offenses Targeting Persons Under 16 Years of Age

Section 800.04, F.S., criminalizes various acts targeting persons under 16 years of age, including: lewd or lascivious battery;[16] lewd or lascivious molestation;[17] lewd or lascivious conduct;[18] and lewd or lascivious exhibition.[19]

Lewd or Lascivious Conduct

A person who intentionally touches a person under 16 years of age in a lewd or lascivious manner[20] or solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.[21]

An offender who is:

- Eighteen years of age or older who commits lewd or lascivious conduct commits a second degree felony.[22]

[12] Chesebrough v. State, 255 So.2d 675, 677 (Fla. 1971).
[13] Whether an act or conduct is lewd or lascivious is a factual issue to be decided on a case -by-case basis. Andrews v. State, 130 So. 3d 788, 790 (Fla. 1st DCA 2014).
[14] Section 800.04(2), F.S.
[15] Section 800.04(3), F.S.
[16] Section 800.04(4), F.S., defines lewd or lascivious battery as engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity. An offender who commits lewd or lascivious battery commits a felony of the second degree.
[17] Section 800.04(5), F.S., defines lewd or lascivious molestation as a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.
[18] Section 800.04(6), F.S.
[19] Section 800.04(7), F.S., defines lewd or lascivious exhibition as a person who intentionally masturbates; intentionally exposes the genitals in a lewd or lascivious manner; or intentionally commits any sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition. An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, generally punishable by not more than fifteen years in state prison. An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree.
[20] Section 800.04(6)(a)1., F.S.
[21] Section 800.04(6)(a)2., F.S.
[22] A felony of the second degree is generally punishable by a term of imprisonment not exceeding 15 years, as provided in s. 775.082, s. 775.083, and s. 775.084, F.S.

- Less than 18 years of age who commits lewd or lascivious conduct commits a third degree felony.[23]

The Florida Standard Jury Instructions for soliciting a person under 16 years of age to commit a lewd or lascivious act provides that to "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.[24]

Lewd or Lascivious Battery

A person commits lewd or lascivious battery by:
- Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age;[25] or
- Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.[26]

Lewd or Lascivious Molestation

A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.[27]

Lewd or Lascivious Exhibition

A person commits lewd or lascivious exhibition by performing any of the following acts in the presence of a person under 16 years of age:
- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner; or
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.[28]

Lewd or Lascivious Written Solicitation of Certain Minors

A person 24 years of age or older who solicits a person who is 16 or 17 years of age in writing to commit a lewd or lascivious act commits a felony of the third degree.[29]

Using a Child in Sexual Performance

Section 827.071(2), F.S., prohibits a person from, knowing the character and content thereof, employing, authorizing, or inducing a child to engage in a sexual performance; or being a parent,

[23] A felony of the third degree is generally punishable by a term of imprisonment not exceeding 5 years, as provided in s. 775.082, s. 775.083, and s. 775.084, F.S.
[24] Fla. Std. Jury Instr. (Crim.) 11.10(d), Lewd or Lascivious Conduct, s. 800.04(6), F.S.
[25] Section 800.04(4)(a)1., F.S.
[26] Section 800.04(4)(a)2., F.S.
[27] Section 800.04(5)(a), F.S.
[28] Section 800.04(7)(a), F.S.
[29] Section 794.053, F.S.

legal guardian, or custodian of such child, consenting to the participation by such child in a sexual performance. A violation for using a child in a sexual performance is a second degree felony[30] and the offense is ranked as a Level 6 offense on the OSRC.

Promoting a Sexual Performance by a Child

Under s. 827.071(3), F.S., a person commits a second degree felony if, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child. The offense is ranked as a Level 6 offense on the OSRC.

Prohibited Acts in Connection with Obscene Materials

A person may not knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. For purposes of this section "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose.[31]

Prohibited Computer Usage

Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child;[32] or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any sexual conduct, commits a felony of the third degree.[33]

Traveling to Meet a Minor

Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

[30] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082, 775.083, or 775.084, F.S.
[31] Section 847.0133(1), F.S.
[32] Section 847.0135(3)(a), F.S.
[33] Section 847.0135(3)(b), F.S.

- Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child;[34] or
- Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in ch. 794, ch. 800, or ch. 827, F.S., or to otherwise engage in any sexual conduct, commits a felony of the second degree.[35]

Transmission of Material Harmful to Minors

Section 847.0138, F.S., prohibits a person, in this state or in any jurisdiction other than this state, from knowingly transmitting or believing that he or she is transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor, as a third-degree felony.

Section 847.001(7), F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement[36] when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

While there are several offenses in current law which prohibit a person from encouraging, enticing, soliciting, or inducing a minor to engage in sexual activity, lewd or lascivious behavior, or a sexual performance, current law does not specifically criminalize the preparation of a child to engage in sexual activity, sexual conduct, or a sexual performance through a pattern of inappropriate communication or conduct directed toward the child.

Criminal Punishment Code and Offense Severity Ranking

- The Criminal Punishment Code[37] is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates.
- Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as

[34] Section 847.0135(4)(a), F.S.
[35] Section 847.0135(4)(b), F.S.
[36] Section 847.001(20), F.S., defines "sexual excitement" as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
[37] Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

provided in s. 921.0023, F.S. Currently, a felony of the third degree is ranked as a level 1 offense, and a second degree felony is ranked as a level 4 offense.[38]

Reclassification of Specified Child Exploitation Offenses

Under s. 775.0847, F.S., a violation of s. 827.071, F.S., must be reclassified to the next higher degree if the offender possesses 10 or more images of any form of child pornography regardless of content, and the content of at least one image contains one or more of the following:

- A child who is younger than the age of five;
- Sadomasochistic abuse involving a child;
- Sexual battery involving a child;
- Sexual bestiality involving a child; or
- Any motion picture, film, video, or computer-generated motion picture, film, or video involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video contains sound.

III. Effect of Proposed Changes:

The bill creates s. 800.045, F.S., to provide that a person 18 years of age or older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of enticing such child to engage in any unlawful sexual behavior with that person or the exploitation of such child for human trafficking as provided in s. 787.06, F.S., commits the offense of lewd or lascivious grooming.

The bill provides that a person 18 years of age or older who commits lewd or lascivious grooming commits a third degree felony,[39] ranked as a Level 3 in the offense severity ranking chart.

The bill defines the terms "child,"[40] "inappropriate communication or conduct,"[41] "sexual activity,"[42] "sexual conduct,"[43] "sexual performance,"[44] and "unlawful sexual behavior."[45]

[38] Section 921.0023(1) and (2), F.S.
[39] A third degree felony is punishable by a term of imprisonment not exceeding 5 years, as provided in ss. 775.082, 775.083, or 775.084, F.S.
[40] "Child" means a person less than 16 years of age.
[41] "Inappropriate communication or conduct" means any verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.
[42] "Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1), F.S.
[43] "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct." Section 847.001(19), F.S.
[44] "Sexual performance" means any performance or part thereof which includes sexual conduct by a child. Section 847.071(1)(m), F.S.
[45] "Unlawful sexual behavior" means any unlawful sexual activity, unlawful sexual conduct, or unlawful sexual performance.

The bill amends s. 921.0022, F.S., increasing ranking levels of specified child exploitation offenses on the offense severity ranking chart (OSRC) of the Criminal Punishment Code.

The bill amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses as follows:[46]

Violation	Felony Level	Current OSRC Ranking	New OSRC Ranking
Lewd or lascivious grooming. Section 800.045(2), F.S.	3rd	New offense	Level 3
Possessing with intent to promote any photographic material, motion picture, etc., which includes child pornography. Section 827.071(4), F.S.	2nd	Level 5	Level 7
Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography. Section 827.071(5), F.S.	3rd	Level 5	Level 6
Use or induce a child in a sexual performance, or promote or direct such performance. Section 827.071(2) and (3), F.S.	2nd	Level 6	Level 7

The bill is effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[46] The bill retains the current felony levels for ss. 827.071(2), (3), (4), and (5), F.S.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution prevents the government from creating laws that restrict the speech of citizens.[47] "Congress shall make no law ... abridging the freedom of speech." The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.[48]

The state has a compelling interest in protecting the physical and psychological well-being of children. Courts have recognized that speech used to further the sexual exploitation of children does not enjoy constitutional protection.[49] The state also has a compelling interest in protecting minors from being seduced to perform sexual actions, and no legitimate commerce is burdened by penalizing the transmission of harmful sexual material to known minors in order to seduce them.[50]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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 determined the bill has a positive insignificant impact (increase of 10 or fewer beds) on prison beds.[51]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.0022.

[47] U.S. Const., amend I.
[48] U.S. Const. amend XIV. *See also* Art. I, Fla. Const.
[49] *Cashatt v. State*, 873 So.3d 430, (1st DCA 2004).
[50] *Pike v. Bruce Church*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970).
[51] Office of Economic and Demographic Research *SB 1656*, available at, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1656.pdf visited February 27, 2024).

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 Fiscal Policy on February 27, 2024:
The committee substitute:

- Creates the offense of lewd or lascivious grooming providing that a person 18 years of older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of:
  - Enticing the child to engage in any unlawful sexual behavior with that person, or
  - The exploitation of the child for human trafficking.
- Provides that a person who commits lewd or lascivious grooming commits a third degree felony, ranked as a Level 3 in the offense severity ranking chart.
- Retains the increased OSRC rankings for certain crimes of child exploitation.

CS by Appropriations Committee on Criminal and Civil Justice on February 13, 2024:
The committee substitute:

- Removes the penalty enhancements for specific crimes relating to the exploitation of children in ss. 847.1035 and 847.0137, F.S.
- Removes several increased OSRC rankings for specified child exploitation offenses.
- Increases the OSRC ranking for possessing or intentionally viewing child pornography under s. 827.071(5) from a level 5 to a level 6.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 800.045, Florida Statutes, is created to read:

800.045 Lewd or lascivious grooming.—

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

(a) "Child" means a person less than 16 years of age.

(b) "Inappropriate communication or conduct" means any

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verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.

(c) "Sexual activity" has the same meaning as in s. 800.04(1).

(d) "Sexual conduct" and the term "sexual excitement" have the same meanings as in s. 847.001.

(e) "Sexual performance" has the same meaning as in s. 827.071(1).

(f) "Unlawful sexual behavior" means any unlawful sexual activity, unlawful sexual conduct, or unlawful sexual performance.

(2) A person 18 years of age or older who, with lewd or lascivious intent, engages in a pattern of inappropriate communication or conduct directed toward a child for the purpose of enticing such child to engage in any unlawful sexual behavior with that person or the exploitation of such child for human trafficking as provided in s. 787.06, commits lewd or lascivious grooming, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (c), (e), (f), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida	Felony	Description

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Statute	Degree	
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank,

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		forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431	3rd	Possessing any marine turtle

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(1)(e)6.		species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.

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624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
794.053	3rd	Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24 years of age or older.
800.045(2)	3rd	Lewd or lascivious grooming.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.



806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.

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817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods of $1,000 or more as new.
817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a



		counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot.
870.01(4)	3rd	Inciting a riot.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).


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893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.



893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner’s practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

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893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)	3rd	Tampering with or fabricating physical evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).



(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.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
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.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or

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		supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester’s spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers’ compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers’ compensation claims.

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440.381(2)	3rd	Submission of false, misleading, or 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.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(3)	3rd	Unlawful carrying of a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.

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790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more specified acts.
812.015(8)(f)	3rd	Retail theft; multiple thefts



		within specified period.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.081(3)	2nd	Trafficking in trade secrets.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
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 solvency of an insuring entity.
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.
143			
	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
144			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
145			
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
146			
	~~827.071(4)~~	~~2nd~~	~~Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.~~
147			
	~~827.071(5)~~	~~3rd~~	~~Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.~~

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828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
836.14(4)	2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.
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.
843.01(1)	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.

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847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
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)5. drugs).
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)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (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.
159			
	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)5. drugs) within 1,000 feet of university.
160			
	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)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
161			
	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)5. drugs) within 1,000 feet of public housing facility.
162			
	893.13(4)(b)	2nd	Use or hire of minor; deliver



		to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.


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499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.

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784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.



790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any

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		other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(2)(c)5.	3rd	Grand theft; third degree; firearm.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.



812.015(9)(d)	2nd	Retail theft; multiple thefts within specified period.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value $10,000 or more, but less than $50,000.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or

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		disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
~~827.071(2) & (3)~~	~~2nd~~	~~Use or induce a child in a sexual performance, or promote or direct such performance.~~
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.



843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
893.131	2nd	Distribution of controlled substances resulting in overdose or serious bodily injury.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.

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944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.


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316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care

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		profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a



		license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
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.
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.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a

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



784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.



784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
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.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.



790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
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, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation;



			victim younger than 12 years of age; offender younger than 18 years of age.
295			
	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.
296			
	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.
297			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
298			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
299			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
300			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault

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		or battery.
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 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.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.014(2)(f)	2nd	Grand theft; second degree; firearm with previous conviction of s. 812.014(2)(c)5.



812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341	1st	Making false entries of



	(2)(b) & (3)(b)		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.
316			
	817.418(2)(a)	3rd	Offering for sale or advertising personal protective equipment with intent to defraud.
317			
	817.504(1)(a)	3rd	Offering or advertising a vaccine with intent to defraud.
318			
	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
319			
	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
320			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
321			
	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.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.

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838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes,


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			plans, finances, directs, manages, or supervises criminal gang-related activity.
339			
	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)5.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
340			
	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)5., within 1,000 feet of property used for religious services or a specified business site.
341			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
342			



893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 50 grams or more, less than 100 grams.
893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135	1st	Trafficking in fentanyl, 4



	(1)(c)4.b.(I)		grams or more, less than 14 grams.
350			
	893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
351			
	893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
352			
	893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
353			
	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
354			
	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
355			
	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
356			
	893.135	1st	Trafficking in Phenethylamines,



(1)(k)2.a.		10 grams or more, less than 200 grams.
893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.



943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.



944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
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; 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.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
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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Section 3. This act shall take effect October 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to child exploitation offenses; creating s. 800.045, F.S.; providing definitions; creating the offense of lewd or lascivious grooming; providing criminal penalties; providing applicability; amending s. 921.0022, F.S.; ranking the offense on the offense severity ranking chart of the Criminal Punishment Code; revising the ranking of specified child exploitation offenses for purposes of the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

133040

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Jones) recommended the following:

Senate Amendment to Amendment (722368)

Between lines 30 and 31
insert:
(3) This section does not apply to any act of medical diagnosis or treatment or to an educational conversation by a parent, caregiver, counselor, or educator that is intended for the purpose of sexual education and not intended to elicit sexual excitement.

By the Appropriations Committee on Criminal and Civil Justice; and Senator Martin

A bill to be entitled

An act relating to child exploitation offenses; amending s. 921.0022, F.S.; revising the ranking of specified child exploitation offenses for purposes of the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Paragraphs (e), (f), and (g) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(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.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.

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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.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny

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		lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	3rd	Submission of false, misleading, or 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.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.

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790.01(3)	3rd	Unlawful carrying of a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.

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806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015 (8)(a) & (c)-(e)	3rd	Retail theft; property stolen is valued at $750 or more and one or more specified acts.
812.015(8)(f)	3rd	Retail theft; multiple thefts within specified period.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.081(3)	2nd	Trafficking in trade secrets.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.

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

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 solvency of an insuring entity.
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.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

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825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
~~827.071(4)~~	~~2nd~~	~~Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.~~
~~827.071(5)~~	~~3rd~~	~~Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.~~
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
836.14(4)	2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency

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

		involving great bodily harm or death.
843.01(1)	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s.

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

		893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
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)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (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.
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)5. drugs) within 1,000 feet of university.
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)6.,

		(2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
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)5. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.

316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.
784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.

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784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.

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

787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with

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		specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(2)(c)5.	3rd	Grand theft; third degree; firearm.

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812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $750 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is $3,000 or more; coordination of others.
812.015(9)(d)	2nd	Retail theft; multiple thefts within specified period.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
817.505(4)(b)	2nd	Patient brokering; 10 or more patients.

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817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value $10,000 or more, but less than $50,000.
825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
~~827.071(2) & (3)~~	~~2nd~~	~~Use or induce a child in a sexual performance, or promote or direct such performance.~~
827.071(5)	3rd	Possess, control, or intentionally view any

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		photographic material, motion picture, etc., which includes child pornography.
828.126(3)	3rd	Sexual activities involving animals.
836.05	2nd	Threats; extortion.
836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.

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893.131	2nd	Distribution of controlled substances resulting in overdose or serious bodily injury.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

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951.22(1)(i)	3rd	Firearm or weapon introduced into county detention facility.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
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.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine

		without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.

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484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
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.
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.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.

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775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility

		staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
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.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

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790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
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, guardian,

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		or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
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; offender 18 years or older; prior conviction for specified sex offense.

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806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
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 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.

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812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.014(2)(f)	2nd	Grand theft; second degree; firearm with previous conviction of s. 812.014(2)(c)5.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.

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817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
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.
817.418(2)(a)	3rd	Offering for sale or advertising personal protective equipment with intent to defraud.
817.504(1)(a)	3rd	Offering or advertising a vaccine with intent to defraud.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.

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817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
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.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
827.071(4)	2nd	Possess with intent to promote any photographic material,

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		motion picture, etc., which includes child pornography.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

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847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
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)5.) within 1,000 feet of a child care 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

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		cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
893.135	1st	Trafficking in hydrocodone, 50

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(1)(c)2.b.		grams or more, less than 100 grams.
893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14

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		grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing

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		of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or

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		conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
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; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a

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		digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

Section 2. This act shall take effect October 1, 2024.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

SB 1656
Bill Number or Topic

Committee

722368
Amendment Barcode (if applicable)

Name Jon Harris Mauver Phone 850 681 0980

Address Email

Street

City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information **OR** Waive Speaking: [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing:

Equality Florida

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/27/24
Meeting Date

Fiscal Policy
Committee

CS/SB 1656
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ron Book

Phone 850-224-3427

Address 104 W. Jefferson
Street

Email RonD RLBookPA.Com

TLH FLa 32301
City State Zip

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Lauren's Kids Foundation

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

1656
Bill Number or Topic

Amendment Barcode (if applicable)

Name John Labriola

Phone 954-515-2084

Address PO Box 650216
Street

Email JohnLabriola@cfflorida.net

Miami FL 33265
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Christian Family Coalition Florida

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1656

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Fiscal

Committee

Amendment Barcode (if applicable)

Name Jonnatton Gonzalez

Phone (305) 290-9006

Address 4126 NW 88th Ave

Street

Email jayg1993my@gmail.com

Coral Springs 33065

City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 1690
INTRODUCER:	Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Yarborough and others
SUBJECT:	Human Trafficking
DATE:	February 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	**Fav/CS**
2.	Atchley	Harkness	ACJ	**Fav/CS**
3.	Parker	Yeatman	FP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1690 creates s. 787.30, F.S., which provides that an owner, manager, employee, or contractor of an adult entertainment establishment who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work in an adult entertainment establishment, commits a first degree misdemeanor.[1] An owner, manager, employee or contractor of an adult entertainment establishment, who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work nude in an adult entertainment establishment, commits a second degree felony.[2]

The bill amends current law by providing that a minor who may qualify for one of the employment exceptions under s. 562.13, F.S., may not be employed as, or perform as, a professional entertainer or otherwise if such employment involves nudity, or be employed by an adult entertainment establishment.

The bill provides that an owner, manager, employee, or contractor of an adult entertainment establishment, that permits a person to perform as an entertainer or work in any capacity shall

[1] A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year, as provided in s. 775.082 or s. 775.083, F.S.

[2] A second degree felony is punishable by a term of imprisonment of fifteen years, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

carefully check the person's driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Uniformed Services Identification Card presented by the person and act in good faith and in reliance upon the representation and appearance of the person in the belief that the person is 21 years of age or older.

The bill provides that a person's ignorance of a person's age or a person's misrepresentation of his or her age cannot be used a defense in a prosecution for certain violations.

This bill may have a positive indeterminate impact on prison beds. See Section V., Fiscal Impact Statement.

The bill is effective July 1, 2024.

II. Present Situation:

Victims of sex trafficking are frequently recruited to work in strip clubs across the United States. Such persons may be recruited to work in strip clubs as hostesses, servers or dancers, but are then required to perform sex acts with customers. Such strip clubs may be designed to provide the space and environment in which buyers may purchase commercial sex.[3]

Commercial Sexual Activity

Strip clubs are considered adult entertainment establishments under Florida law. Section 847.001, F.S., defines "adult entertainment establishment," to include adult bookstores, adult theaters, special cabaret, and unlicensed massage establishments.

- An adult bookstore is any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock book, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material.
- Adult theaters are enclosed buildings or enclosed spaces within a building used for presenting either film, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to only adults.
- Special cabaret is any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults.
- An unlicensed massage establishment is any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by

[3] National Human Trafficking Hotline, *Hostess/Strip Club-Based*, available at, https://humantraffickinghotline.org/en/sex-trafficking-venuesindustries/hostessstrip-club-based (last visited January 31, 2024).

hand or by any electrical or mechanical device, on or off the premises. This term does not include an establishment licensed under s. 480.043, F.S.

Several states have enacted laws prohibiting persons under 21 years of age from working or performing in certain adult entertainment establishments. These laws have been challenged, and courts have found that the state has a compelling interest in protecting victims from human trafficking, and that there is often a link between human trafficking and certain adult entertainment establishments. In Jane Doe I v. Landry, the United States Court of Appeals, Fifth Circuit upheld a Louisiana law that prohibited establishments licensed to serve alcohol from employing nearly nude entertainers younger than 21 years of age on the grounds that the law furthered the state's interests in curbing human trafficking and prostitution.[4]

The Court found that the State of Louisiana sufficiently demonstrated its reasonable belief that there was a link between Louisiana statutes that prohibited women aged 18 to 21 years old from nude erotic dancing in establishments that served alcohol and curbing the secondary effects of human trafficking and prostitution such that the statutes furthered substantial governmental interest, as required for statutes to survive intermediate scrutiny on erotic dancers' First Amendment free speech challenge.[5]

In *Valadez v. Paxton*, the United States District Court, W.D. Texas, Austin Division held that the State of Texas sufficiently demonstrated that it held reasonable belief that the law prohibiting all working relationships between persons between the ages of 18 and 20 years old and sexually-oriented businesses would serve to curb harmful secondary effects of sexually-oriented businesses, including trafficking and sexual exploitation.[6]

The United States District Court denied a motion for a preliminary injunction against the enforcement of the Texas bill prohibiting "all working relationships between 18-20 year olds and sexually-oriented businesses" because the plaintiff's failed to show that the age restrictions were not rationally related to the state's interest in curbing human trafficking.[7]

In *DC Operating, LLC v. Paxton*, the United States District Court, W.D. Texas, Austin Division, denied a motion for a preliminary injunction in part, finding that the state's recently enacted bill relating to restrictions on the age of person employed by or allowed on the premises of a sexually oriented business is rationally related to the state's interest in curbing human trafficking.[8] The Court ruled that the plaintiff's failed to establish a likelihood of success on the merits of their claims under the First Amendment, Fourteenth Amendment Due Process and Equal Protection Clauses of the United States Constitution, and Texas Constitution's equivalent provisions.[9]

In *Wacko's Too, Inc. v. City of Jacksonville*, the United States District Court, M.D. Florida upheld age restrictions in a City of Jacksonville ordinance requiring performers at adult entertainment establishments to be at least 21 years of age based, at least in part, on evidence that

[4] *Doe I v. Landry*, 909 F.3d 99, 109 (5th Cir. 2018).
[5] *Id*.
[6] *Valadez v. Paxton*, 553 F. Supp.3d 387 (W.D. Tex. 2021).
[7] *Id*.
[8] *Dc Operating, LLC v. Paxton*, 586 F.Supp.3d 554, 572 (W.D. Tex. 2022).
[9] *Id*.

there was a reasonable basis to believe that the age restrictions would further the City's interest in preventing human and sex trafficking.[10] The city ordinance provisions forbid anyone under age 21 from receiving the requisite license to perform at adult entertainment establishments in the city. The Eleventh Circuit upheld the requirement that adult entertainment establishments maintain rosters as a "permissible way to keep track of licensed performers, secondary to combating human trafficking."[11] The performer disclosure requirement under the ordinance also relates to preventing human trafficking by allowing law enforcement to keep track of performers.

Human Trafficking

The Florida Legislature recognizes human trafficking as a form of modern-day slavery whose victims include young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.[12] While victims of human trafficking are forced to work in prostitution or sexual entertainment, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, factory work, and agricultural work.[13]

Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,[14] purchasing, patronizing, procuring, or obtaining[15] another person for the purpose of exploitation of that person.[16]

Human trafficking includes two types of exploitation: commercial sexual exploitation (CSE) and forced labor.[17] In 2022, according to the Department of Children and Families, 354 youth were verified as victims of commercial sexual exploitation (CSE) in Florida. The number has decreased from 2021, when 379 youth were verified.[18]

Soliciting or Purchasing Prostitution

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity for hire.[19]

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second-degree misdemeanor:[20]

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[10] *Wacko's Too Inc. v. City of Jacksonville*, 658 F.Supp.3d 1086 (11th Cir. 2023).
[11] *Id*. at 1127.
[12] Section 787.06, F.S.
[13] *Id*.
[14] Section 787.06(2)(f), F.S., provides "maintain" means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines "services" as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.
[15] Section 787.06(2)(g), F.S., provides "obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.
[16] Section 787.06(2)(d), F.S.
[17] Section 787.06, F.S.
[18] Office of Program Policy Analysis & Government Accountability, *Annual Report on Commercial Sexual Exploitation of Children in Florida, 2023*, available at https://oppaga.fl.gov/Documents/Reports/23-08.pdf (last visited December 13, 2023).
[19] This definition excludes sexual activity between spouses. s. 796.07(1)(b), F.S.
[20] A second-degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding $500. Sections 775.082(4)(b) and 775.083(1)(e), F.S

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness,[21] assignation,[22] or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act;
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- To purchase the services of any person engaged in prostitution.[23]

Additionally, under s. 796.07(2)(f), F.S., a person who solicits, induces, entices, or procures another person to commit prostitution, lewdness, or assignation commits a first-degree misdemeanor for a first violation, a third-degree felony for a second violation, and a second-degree felony for a third or subsequent violation.[24] An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:

- One hundred hours of community service;[25]
- Being required to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers, if such a program is offered in the circuit in which the offender is sentenced;[26]
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;[27]
- Vehicle impoundment up to 60 days if the offender used a car to commit the violation;[28]
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database in certain situations;[29] and
- A $5,000 civil fine.[30]

[21] "Lewdness" means any indecent or obscene act. Section 796.07(1)(c), F.S

[22] "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. Section 796.07(1)(d), F.S.

[23] Section 796.07(2), F.S.

[24] Section 796.07(2)(f) and (5)(a), F.S.

[25] Section 796.07(5)(b)1., F.S.

[26] Section 796.07(5)(b)2., F.S.

[27] Section 796.07(5)(c), F.S.

[28] Section 796.07(5)(d), F.S.

[29] Section 796.07(5)(e), F.S.

[30] Section 796.07(6), F.S.

III. Effect of Proposed Changes:

The bill amends s. 562.13, F.S., providing that a minor who may qualify for one of the exceptions may not be employed as or perform as a professional entertainer or otherwise if such employment involves nudity, or be employed by an adult entertainment establishment. Section 563.13, F.S., provides a list of exceptions that allows a minor to be employed by alcohol venders.

The bill creates s. 787.30, F.S., to prohibit a person under the age of 21 from working in an adult entertainment establishment.[31] Under the bill, adult entertainment establishments include adult bookstores, adult theaters, special cabarets, and unlicensed massage establishments as defined by statute. Specifically, the bill provides that an owner, manager, employee, or contractor of an adult entertainment establishment, who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work in an adult entertainment establishment, commits a first degree misdemeanor.[32]

Furthermore, the bill provides that an owner, manager, employee or contractor of an adult entertainment establishment, who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work nude in an adult entertainment establishment, commits a second degree felony.[33] The bill defines the term "nude" to mean the showing of the human male or female genitals, pubic area, or buttock with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute nudity, irrespective of whether or not the nipple is covered during or incidental to feeding.

The bill requires an owner, manager, employee, or contractor of an adult entertainment establishment that permits a person to perform as an entertainer or work in any capacity shall carefully check the person's driver license or an identification card issued by this state or another

[31] The bill defines "adult entertainment establishment" to have the same meaning as provided in s. 847.001." Section 847.001, F.S., defines the term to mean any of the following terms as defined: "(a)"adult bookstore" means any corporation, partnership, or business of any kind which restricts or purports to restrict admission only to adults, which has as part of its stock books, magazines, other periodicals, videos, discs, or other graphic media and which offers, sells, provides, or rents for a fee any sexually oriented material; (b) "adult theater" means an enclosed building or an enclosed space within a building used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts or purports to restrict admission to only adults; (c) "special cabaret" means any business that features persons who engage in specific sexual activities for observation by patrons, and which restricts or purports to restrict admission only to adults; and (d) "Unlicensed massage establishment" means any business or enterprise that offers, sells, or provides, or that holds itself out as offering, selling, or providing, massages that include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. The term "unlicensed massage establishment" does not include an establishment licensed under s. 480.043 which routinely provides medical services by state-licensed health care practitioners and massage therapists licensed under s. 480.041."

[32] A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year, as provided in s. 775.082 or s. 775.083, F.S.

[33] A second degree felony is punishable by a term of imprisonment of fifteen years, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

state of the United States, a passport, or a United States Uniformed Services identification card presented by the person and act in good faith and in reliance upon the representation and appearance of the person in the belief that the person is 21 years of age or older.

The bill provides that for purposes of this section, a person's ignorance of a person's age or a person's misrepresentation of his or her age may not be raised as a defense in a prosecution for a violation of this section.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution prevents the government from creating laws that restrict the speech of citizens.[34] "Congress shall make no law ... abridging the freedom of speech." The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.

The state has a compelling interest in safeguarding the community and children from trafficking and sexual exploitation. A statute regulating conduct with incidental effects on speech can be a reasonable restriction if, among other things, it is narrowly tailored to serve substantial government interests.[35]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[34] U.S. Const., amend I.
[35] *Id.*

B. Private Sector Impact:

The bill may have an indeterminate impact on private businesses by excluding individuals under the age of 21 from working in all adult establishments including adult bookstores.

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 determined the bill may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) due to the unranked, 2nd degree felony (level 4 default) created in the bill. In FY 22-23, the incarceration rate for a Level 4. 2nd degree felony was 27.6%.[36]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 562.13 and 787.30.

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 Appropriations Committee on Criminal and Civil Justice on February 13, 2024:
The committee substitute:

- Restores language in s. 562.13, F.S., prohibiting a minor who may otherwise qualify for an exemption to work for an alcohol vendor from being employed in a position that involves nudity on the part of the minor for purpose of adult entertainment, and that such a minor is also prohibited from being employed by an adult entertainment establishment, as defined in s, 847.001, F.S.
- Provides that a person's ignorance of a person's age or a person's misrepresentation of his or her age cannot be used as a defense in a prosecution for certain violations.

[36] *SB 1690-Human Trafficking*, Office of Economic and Demographic Research http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1690.pdf

CS by Criminal Justice on January 30, 2024:
The committee substitute:

- Provides that an owner, manager, employee, or contractor of an adult entertainment establishment who knowingly employs or contracts to employ a person younger than 21 years of age to perform or work in an adult entertainment establishment in any capacity commits a first degree misdemeanor.
- Provides that an owner, manager, employee, or contractor of an adult entertainment establishment who knowingly employs or contracts to employ a person younger than 21 years of age to perform nude in an adult entertainment establishment commits a second degree felony.
- Requires an owner, manager, employee, or contractor to carefully check the identification card or driver's license of a person hired to perform as an entertainer or work in any capacity in an adult entertainment establishment.
- Defines the term "nude."

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 Appropriations Committee on Criminal and Civil Justice; the Committee on Criminal Justice; and Senators Yarborough and Perry

A bill to be entitled

An act relating to human trafficking; amending s. 562.13, F.S.; revising applicability of provisions governing the employment of minors by vendors licensed under the Beverage Law; creating s. 787.30, F.S.; defining terms; prohibiting the employment of persons younger than 21 years of age in adult entertainment establishments; providing criminal penalties; requiring adult entertainment establishments to check identification of entertainers; specifying forms of identification that may be used; prohibiting the raising of specified arguments as a defense in a prosecution for certain violations; providing an effective date.

WHEREAS, Florida is ranked third nationally for reported cases of human trafficking abuses, many of which involved sex trafficking, and

WHEREAS, adult entertainment establishments are widely recognized as being a significant part of the sex trafficking network used by traffickers to coerce and facilitate men, women, and children into performing sexual acts, which places the employees of these establishments in direct and frequent contact with the victims of human trafficking, and

WHEREAS, victims of sex trafficking are frequently recruited to work as performers or employees in adult entertainment establishments, and

WHEREAS, researchers have found that sex trafficking victims are more likely to be trafficked by someone from within

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

her or his own community, and

WHEREAS, persons younger than 21 years of age are more likely to still remain within and dependent on the community in which they were raised, and

WHEREAS, research studies have identified the average age at which a person in the United States enters the sex trade for the first time as 17 years of age, and

WHEREAS, sex trade at adult entertainment establishments is a common occurrence in Florida, thereby subjecting performers at these establishments to frequent propositions and enticements to engage in sex trade actions and sex trafficking from customers, as well as strip club employees, managers, and owners, and

WHEREAS, an understanding of history and human nature reveals that there are sex criminals of various kinds who will prey on the young and vulnerable, and

WHEREAS, restricting the employment of persons younger than 21 years of age at adult entertainment establishments furthers an important state interest of protecting those vulnerable individuals from sex trafficking, drug abuse, and other harm, and

WHEREAS, many court opinions recognize that, while expressive activities are entitled to some First Amendment protections at adult entertainment establishments, content-neutral restrictions or regulations intended to minimize the secondary harmful effects of those businesses tend to be upheld, and

WHEREAS, on November 16, 2018, the federal Fifth Circuit Court of Appeals, in the case of *Jane Doe I v. Landry*, 909 F.3d 99 (5th Cir. 2018), upheld a Louisiana law that prohibited

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

establishments licensed to serve alcohol from employing nearly nude entertainers younger than 21 years of age on the grounds that the law furthered the state's interests in curbing human trafficking and prostitution, and

WHEREAS, the federal district court in *Valadez v. Paxton*, 553 F.Supp.3d 387 (W.D. Tex. 2021), denied a motion for a preliminary injunction against the enforcement of Texas Senate Bill 315 prohibiting "all working relationships between 18-20-year-olds and sexually-oriented businesses" because the plaintiffs failed to show that the age restrictions were not rationally related to the state's interest in curbing human trafficking, and

WHEREAS, the federal district court in *DC Operating, LLC v. Paxton*, 586 F.Supp.3d 554 (W.D. Tex. 2022), denied a motion for a preliminary injunction against Texas Senate Bill 315, at least in part, because of the state's evidence of the correlation between raising the minimum employment age and reducing human trafficking, and

WHEREAS, the federal district court in *Wacko's Too, Inc., v. City of Jacksonville*, 658 F.Supp.3d 1086 (M.D. Fla. 2023), upheld age restrictions in a City of Jacksonville ordinance requiring performers at adult entertainment establishments to be at least 21 years of age based, at least in part, on evidence that there was a reasonable basis to believe that the age restrictions would further the city's interest in preventing human and sex trafficking, NOW, THEREFORE,

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

Section 1. Section 562.13, Florida Statutes, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(1) Unless otherwise provided in this section, it is unlawful for any vendor licensed under the Beverage Law to employ any person under 18 years of age.

(2) This section shall not apply to:

(a) Professional entertainers 17 years of age who are not in school.

(b) Minors employed in the entertainment industry, as defined by s. 450.012(5), who have either been granted a waiver under s. 450.095 or employed under the terms of s. 450.132 or under rules adopted pursuant to either of these sections.

(c) Persons under the age of 18 years who are employed in drugstores, grocery stores, department stores, florists, specialty gift shops, or automobile service stations which have obtained licenses to sell beer or beer and wine, when such sales are made for consumption off the premises.

(d) Persons 17 years of age or over or any person furnishing evidence that he or she is a senior high school student with written permission of the principal of said senior high school or that he or she is a senior high school graduate, or any high school graduate, employed by a bona fide food service establishment where alcoholic beverages are sold, provided such persons do not participate in the sale, preparation, or service of the beverages and that their duties are of such nature as to provide them with training and knowledge as might lead to further advancement in food service

establishments.

(e) Persons under the age of 18 years employed as bellhops, elevator operators, and others in hotels when such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.

(f) Persons under the age of 18 years employed in bowling alleys in which alcoholic beverages are sold or consumed, so long as such minors do not participate in the sale, preparation, or service of such beverages.

(g) Persons under the age of 18 years employed by a bona fide dinner theater as defined in this paragraph, as long as their employment is limited to the services of an actor, actress, or musician. For the purposes of this paragraph, a dinner theater means a theater presenting consecutive productions playing no less than 3 weeks each in conjunction with dinner service on a regular basis. In addition, both events must occur in the same room, and the only advertised price of admission must include both the cost of the meal and the attendance at the performance.

(h) Persons under the age of 18 years who are employed in places of business licensed under s. 565.02(6), provided such persons do not participate in the sale, preparation, or service of alcoholic beverages.

However, a minor who qualifies for one of the exceptions in this subsection ~~to whom this subsection otherwise applies~~ may not be employed as or perform ~~if the employment, whether~~ as a professional entertainer or otherwise if such employment~~,~~

involves nudity, as defined in s. 847.001, on the part of the minor and such nudity is intended as a form of adult entertainment, or be employed by an adult entertainment establishment, as defined in s. 847.001.

(3)(a) It is unlawful for any vendor licensed under the beverage law to employ as a manager or person in charge or as a bartender any person:

1. Who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state.

2. Who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or any felony violation of chapter 893 or the controlled substances act of any other state or the Federal Government.

3. Who has, in the last past 5 years, been convicted of any felony in this state, any other state, or the United States.

The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime.

(b) This subsection shall not apply to any vendor licensed under the provisions of s. 563.02(1)(a) or s. 564.02(1)(a).

Section 2. Section 787.30, Florida Statutes, is created to read:

787.30 Employing persons under the age of 21 years in adult entertainment establishments prohibited.—

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

(a) "Adult entertainment establishment" has the same meaning as in s. 847.001.

(b) "Nude" means the showing of the human male or female genitals, pubic area, or buttock with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute nudity, regardless of whether the nipple is covered during or incidental to feeding.

(2)(a) Except as provided in paragraph (b), an owner, a manager, an employee, or a contractor of an adult entertainment establishment who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work in an adult entertainment establishment commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) An owner, a manager, an employee, or a contractor of an adult entertainment establishment who knowingly employs, contracts with, contracts with another person to employ, or otherwise permits a person younger than 21 years of age to perform or work while nude in an adult entertainment establishment commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) An owner, a manager, an employee, or a contractor of an adult entertainment establishment who permits a person to perform as an entertainer or work in any capacity for the establishment shall carefully check the person's driver license or identification card issued by this state or another state of

the United States, a passport, or a United States Uniformed Services identification card presented by the person and act in good faith and in reliance upon the representation and appearance of the person in the belief that the person is 21 years of age or older.

(4) For purposes of this section, a person's ignorance of another person's age or a person's misrepresentation of his or her age may not be raised as a defense in a prosecution for a violation of this section.

Section 3. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	CS/CS/SB 1716
INTRODUCER:	Fiscal Policy Committee; Banking and Insurance Committee; and Senator Boyd
SUBJECT:	Citizens Property Insurance Corporation
DATE:	February 29, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Fav/CS**
2.	Knudson	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1716 revises Citizens Property Insurance Corporation's (Citizens) eligibility criteria, and authorizes surplus lines insurers meeting certain criteria to make take-out offers to certain risks, specifies that the requirement that Citizens personal lines policyholders must maintain flood insurance only requires coverage on the structure, facilitates the transition of Citizens into an organizational structure where all policies are held in a single account, revises the criteria for appointment as a licensed agent for Citizens, and makes additional changes.

The bill makes eligible for Citizens coverage personal lines residential risks with a replacement value[1] of at least $700,000 but less than $1 million that are located within certain zip codes where the Office of Insurance Regulation (OIR) determines there is not a reasonable degree of competition within the property insurance market. Risks made eligible pursuant to this provision will be subject to a rate standard that does not allow for decreases and limits an annual increase to 50 percent.

The bill allows surplus lines insurers meeting certain criteria and approved by the OIR to submit take-out offers on personal lines residential risks insured by Citizens, or for which Citizens has received an application for coverage, if the risks are not primary residences. A "primary residence" is defined as a dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more

[1] For an insured structure the replacement cost refers to the dwelling. For an insured single condominium unit, the replacement cost is for the combined dwelling and contents.

than 9 months of each year. A take-out offer from an approved surplus lines insurer will only render a Citizens policyholder ineligible for Citizens the premium offered does not exceed the Citizens premium on comparable coverage by more than 20 percent; this is the standard that applies to take-out offers from authorized insurers. Only surplus lines insurers that are approved to participate by the OIR may make participate in the take-out program. To obtain approval, the surplus lines insurer apply to the OIR to participate in the take-out process, provide data to the OIR related to coverage and rates, and file rates for review with the OIR for the take-out offer. The surplus lines insurer must also meet certain criteria such as having an "A-" financial strength rating from A.M. Best and having a personal lines residential risk program that is managed by a Florida resident surplus lines broker.

The bill revises the Citizens eligibility requirement that certain personal lines residential risks must maintain flood insurance, by requiring flood insurance only on the dwelling. This provision is effective upon the bill becoming law.

The bill makes statutory changes to facilitate the transition of Citizens Property Insurance Corporation from an organizational structure where Citizens policies are held in three different accounts (a personal lines account, commercial account, and a coastal account) to a structure where all Citizens policies are held in a single account (the Citizens account). A primary benefit of a single-account structure is that it eliminates the possibility of a Citizens account experiencing a deficit necessitating policyholder surcharges and emergency assessments while one of Citizens' other accounts has surplus funds.

The bill provides that only licensed agents holding appointments by at least three authorized insurers that are actually writing or renewing property insurance in this state may be appointed by Citizens as its licensed agents. Current law requires the agent to hold an appointment by only one such insurer.

The bill also:

- Revises the signed acknowledgment of potential policyholder surcharge and assessment liability that agents must obtain from an applicant for Citizens coverage for the purpose of conforming the revised surcharge and assessment liabilities associated with the reorganization of Citizens into a single account;
- Provides that the executive director of Citizens is the Agency head of Citizens for purposes of procurement bid protests under s. 287.057, F.S., and authorizes the executive director to appoint a designee to act on his or her behalf for all purposes under the that statute;
- Deletes language prohibiting the application of the Division of Administrative Hearing's bond requirements related to Citizens bid protest hearings;
- Allows licensed surplus lines agents access to confidential and exempt claims files for the purpose of considering whether to write a risk currently insured by Citizens;
- Authorizes Citizens to share its claims data with the National Insurance Crime Bureau (NICB), so long as the NICB maintains the confidentiality of certain documents;
- Authorizes Citizens to acquire patents, trademarks, and copyrights on work products and take action to enforce its rights therein; and
- Makes technical and clarifying changes.

Except as otherwise provided, the bill is effective July 1, 2024.

II. Present Situation:

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[2] Citizens is not a private insurance company.[3] Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[4]

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by a nine member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.[5] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[6] The Governor appoints an additional member who serves solely to advocate on behalf of the consumer.[7] Citizens is subject to regulation by the Office of Insurance Regulation (OIR).

Current Policies

As of November 30, 2023, Citizens reports 1,260,430 policies in-force with a total exposure of $562.5 billion.[8] That is a reduction of over 74,000 policies and $23.3 billion in exposure from October 31, 2023.

Eligibility for Insurance in Citizens

Citizens is required to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provide specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property.[9] Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.[10]

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[2] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[3] Section 627.351(6)(a)1., F.S.
[4] Section 2, ch. 2002-240, Laws of Fla.
[5] Section 627.351(6)(a)2., F.S.
[6] Section 627.351(6)(c)4.a., F.S.
[7] Section 627.351(6)(c)4., F.S.
[8] Corporate Analytics Business Overview, September 20, 2023 Report, p.1 https://www.citizensfla.com/documents (last visited January 10, 2024).
[9] Section 627.351(6)(c)5., F.S.
[10] *See* Citizens Property Insurance Corporation, *PIF Standard Summary Report for Period Ending Nov. 30, 2023 (December 6, 2023)* (On file with the Florida Senate Banking and Insurance Committee).

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more. [11] The coverage offered by the private insurer must be comparable to Citizens coverage.

A residential policyholder may not renew insurance in Citizens if an authorized insurer offers to insure the property at a premium no more than 20 percent greater than the Citizens renewal premium.[12] The insurance coverage offered from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.[13]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[14] Structures with a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, are not eligible for coverage with Citizens.[15] However, Citizens is allowed to insure structures with a dwelling replacement cost, or a condominium unit with a dwelling and contents replacement cost, of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.[16]

Citizens "Glidepath" Rates

From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006.[17] In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[18] In 2021, the Legislature revised this glidepath to increase it one percent per year to up to 15 percent, as follows:[19]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

[11] Section 627.351(6)(c)5., F.S.
[12] Section 627.351(6)(c)5.a., F.S.
[13] *Id.*
[14] Section 627.351(6)(a)3., F.S.
[15] Section 627.351(6)(a)3.d., F.S.
[16] The OIR, Final Order Case No: 165625-14, Dec. 22, 2014, https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf;*See also* Section 627.351(6)(a)3.d., F.S., and Citizens, *Update to Maximum Coverage Limits*, Nov. 12, 2019, https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits (all sites last visited January 10, 2024).
[17] Section 15, ch. 2006-12, Laws of Fla.
[18] Section 10, ch. 2009-87, Laws of Fla.
[19] Section 627.351(6)(n)5., F.S.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.[20] In addition to the overall glidepath rate increase, Citizens can increase its rates to recover the additional reimbursement premium it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.[21] The glidepath does not apply to policies written on or after November 1, 2023, that:

- Do not cover a primary residence;
- Are new policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or
- Are subsequent renewals of those policies.[22]

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.[23] In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.[24] Under Florida law, if the Citizens Board of Directors determines a Citizens account has a projected deficit, Citizens is authorized to levy assessments[25] on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[26]

Citizens Accounts

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.[27]

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[20] Section 627.351(6)(n)7., F.S.
[21] Section 627.351(6)(n)6., F.S.
[22] Section 627.351(6)(n)8., F.S.
[23] Citizens, *2023 Rate Kit*, https://www.citizensfla.com/documents/ (last visited January 10, 2024).
[24] Citizens, *Insurance/Insurance 101/Assessments*, https://www.citizensfla.com/assessments (last visited January 10, 2024).
[25] Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.
[26] Accident and health insurance policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.
[27] *See* s. 627.351(6)(b)2.a., F.S.,; Citizens, *Account History and Characteristics*, https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563 (Mar. 2016) (last visited Dec. 4, 2022).

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.[28]

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.[29]

The Legislature has authorized Citizens to combine its three accounts into a single account, which will ensure that Citizens has access to all of its assets to pay loss claims. The new account is referred to as the Citizens account and will offer the various coverages and policies provided pursuant to the three account structure. The combination of the Citizens accounts into a single account will enable Citizens to have access to all of its surplus when paying claims. Under the three account structure, a deficit could occur in one of the accounts that necessitates surcharges and assessments on Citizens policyholders and policyholders in the private market even though one of the other Citizens accounts still has a surplus that could have resolved the deficit in the other account.

Citizens Assessment Authority

Under the three account structure, in the event Citizens has insufficient funds to pay claims in any account, the corporation must impose up to a policyholder surcharge of up to 15 percent of premium. Each assessment is charged to all Citizens policyholders regardless of which account their policies are written in, thus a Citizens policyholder has a possible assessment liability of 45 percent of premium on policyholders of the corporation. If a deficit in the coastal account remains after imposition of the 15 percent policyholder surcharge for that account, Citizens must impose a 2 percent regular assessment on assessable statewide premium on private market insureds. Citizens policyholders are not subject to the 2 percent regular assessment. If the maximum policyholder surcharge is imposed (and for a Coastal Account deficit, the 2 percent regular assessment is also imposed) and Citizens is still in a deficit, then it must impose an emergency assessment of up to 10% per year, per account, on assessable statewide premium on both private market insureds and Citizens insureds. The emergency assessments of up to 10 percent per account may be imposed for as many years as is necessary to resolve the Citizens deficit.[30]

Under the single account structure, in the event Citizens has insufficient funds to pay claims, the corporation must impose a policyholder surcharge of up to 15 percent of premium on policyholders of the corporation. If the maximum policyholder surcharge is imposed and Citizens is still in a deficit, then it must impose an emergency assessment of up to 10 percent per year on assessable statewide premium on both private market insureds and Citizens insureds. The

[28] *Id.*
[29] *Id.*
[30] Section 627.351(6)(b)3., F.S.

emergency assessments may be imposed for as many years as is necessary to resolve the Citizens deficit.[31]

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.[32] In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to take-out agreements.[33] As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;[34]
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting a take-out policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and agent regarding all insurers requesting to take out the policy and the policyholder's option to accept a take-out offer or to reject all take out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
  - The amount of the estimated premium;
  - A description of the coverage; and
  - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[35] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.[36] An applicant for new coverage, or an insured for renewed coverage, is not eligible for coverage from Citizens if the premium offered from an authorized insurer is at or below the eligibility threshold for new personal lines residential risks of more than 20 percent.[37] An applicant for coverage who was declared ineligible for coverage at renewal by Citizens in the previous 36 months must be considered a renewal under the Citizens clearinghouse statute if the authorized insurer making the offer continues to insure the applicant and increased the rate higher than allowed under s. 627.351(6)(n)5., F.S.[38]

[31] Section 627.351(6)(b)5., F.S.
[32] Section 627.351(6)(q)3.a., F.S.
[33] Chapter 2016-229, Laws of Fla.
[34] Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.
[35] Section 10, ch. 2013-60, Laws of Fla.
[36] Section 627.3518(2)-(3), F.S.
[37] Section 627.3518(5), F.S.
[38] *Id.*

Citizens Flood Insurance Requirement

Citizens personal lines residential policyholders must secure and maintain flood insurance that meets certain requirements as a condition of eligibility for Citizens coverage.[39] The implementation of this requirement is based on as schedule.[40] For Citizens personal lines residential policyholders whose property is located within special hazard flood zones defined by the FEMA, flood coverage must be obtained by:

- April 1, 2023, for Citizens new policies.
- July 1, 2023, for Citizens renewal policies.

For all other risks, the requirement to obtain flood insurance must be implemented for specified Citizens policyholders as follows:

- March 1, 2024, for policies insuring a structure that has a dwelling replacement cost of $600,000 or more.
- March 1, 2025, for policies insuring a structure that has a dwelling replacement cost of $500,000 or more.
- March 1, 2026, for policies insuring a structure that has a dwelling replacement cost of $400,000 or more.
- March 1, 2027, for all other policyholders.

The requirement to obtain flood insurance does not apply to policies that do not provide coverage for the peril of wind or to policies that provide coverage under a condominium unit owners form.[41]

III. Effect of Proposed Changes:

Expanded Citizens Eligibility for Risks Located in Certain Zip Codes

The bill revises Citizens eligibility criteria, allowing personal lines residential risks with a replacement value[42] of at least $700,000 but less than $1 million to be eligible for Citizens coverage if such risks are located within zip codes for which the OIR determines there is not a reasonable degree of competition within the property insurance market. Risks made eligible pursuant to this provision will be subject to a rate standard that does not allow for decreases and limits an annual increase to 50 percent.

The bill does not affect the eligibility criteria for personal lines residential risks located in counties that the OIR has found lack a reasonable degree of competition within the property insurance market. Currently, the OIR has found that Dade County and Monroe County lack such competition. In such counties, personal lines residential risks with a replacement value of less than $1 million may be eligible for Citizens coverage. The rates on risks located in counties that the OIR has determined lack a reasonable degree of competition are subject to the Citizens rate

[39] Section 627.351(6)(aa), F.S.
[40] *Id.*
[41] Section 627.351(6)(aa)3., F.S.
[42] For an insured structure the replacement cost refers to the dwelling. For an insured single condominium unit, the replacement cost is for the combined dwelling and contents.

glidepath, which limits rate increases to 13 percent on any single policy, excluding sinkhole coverage, coverage changes, and surcharges.

Take-Out Offers by Approved Surplus Lines Insurers

The bill allows surplus lines insurers meeting certain criteria and approved by the OIR to submit take-out offers on personal lines residential risks insured by Citizens, or for which Citizens has received an application for coverage, if the risk is not a primary residence. A "primary residence" is defined as a dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

A take-out offer from an approved surplus lines insurer will only render a Citizens policyholder ineligible for Citizens the premium offered does not exceed the Citizens premium on comparable coverage by more than 20 percent; this is the standard that applies to take-out offers from authorized insurers. Only surplus lines insurers that are approved to participate by the OIR may make participate in the take-out program. To obtain approval, the surplus lines insurer apply to the OIR to participate in the take-out process, provide data to the OIR related to coverage and rates, and file rates for review with the OIR for the take-out offer. The surplus lines insurer must also meet certain criteria such as having an "A-" financial strength rating from A.M. Best and having a personal lines residential risk program that is managed by a Florida resident surplus lines broker.

The bill allows licensed surplus lines agents access to confidential and exempt claims files for the purpose of considering whether to write a risk currently insured by Citizens;

Citizens Eligibility – Flood Insurance Requirement

The bill revises the requirement that personal lines residential risks (not including condominium units) must maintain flood insurance to be eligible for Citizens coverage. The bill specifies that flood insurance must be purchased on the structure. This change has the effect of allowing such policyholders to not purchase flood coverage on contents as a condition of Citizens eligibility.

Single Account Structure

The bill makes statutory changes to facilitate the transition of Citizens Property Insurance Corporation from an organizational structure where Citizens policies are held in three different accounts (a personal lines account, commercial account, and a coastal account) to a structure where all Citizens policies are held in a single account (the Citizens account). A primary benefit of a single-account structure is that it eliminates the possibility of a Citizens account experiencing a deficit necessitating policyholder surcharges and emergency assessments while one of Citizens' other accounts has surplus funds.

Criteria for Appointment as an Agent for Citizens

The bill provides that only licensed agents holding appointments by at least three authorized insurers that are actually writing or renewing property insurance in this state may be appointed

by Citizens as its licensed agents. Current law requires the agent to hold an appointment by only one such insurer.

Trademarks, Copyrights, and Patents

The bill authorizes Citizens, in its own name, to take the following actions:

- Secure letters of patent, copyrights, or trademarks on any work products and enforce its rights therein;
- License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use, on a royalty basis or for other consideration;
- Take actions necessary, including legal actions, to protect patents, copyrights, and trademarks;
- Enforce the collection of sums due to Citizens for the manufacture or use by any other party;
- Sell its patents, copyrights, or trademarks; and
- Do any actions necessary and proper to execute the foregoing powers.

Bid Protest Hearings

The bill provides that the executive director of Citizens is the Agency head of Citizens for purposes of procurement bid protests under s. 287.057, F.S., and authorizes the executive director to appoint a designee to act on his or her behalf for all purposes under the that statute. The bill also deletes language prohibiting the application of the Division of Administrative Hearing's bond requirements related to Citizens bid protest hearings.

Other Provisions

The bill also:

- Revises the signed acknowledgment of potential policyholder surcharge and assessment liability that agents must obtain from an applicant for Citizens coverage for the purpose of conforming the revised surcharge and assessment liabilities associated with the reorganization of Citizens into a single account;
- Authorizes Citizens to share its claims data with the National Insurance Crime Bureau (NICB), so long as the NICB maintains the confidentiality of certain documents; and
- Makes technical and clarifying changes.

Effective Dates

The bill is effective July 1, 2024, except for Section 1 of the bill revising the flood insurance requirement for Citizens policyholders, which is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.351, 627.3511, and 627.3518.

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 Fiscal Policy Committee on February 27, 2024
The committee substitute:

- Provides, effective upon the bill becoming law, that the requirement that personal lines residential risks other than condominium units must maintain flood insurance to be eligible for Citizens coverage only requires flood insurance on the dwelling itself.
- Provides that personal lines residential structures and condominium units with a replacement cost of at least $700,000 but less than $1 million, if located in a zip code that the OIR has determined lacks a reasonable degree of competition in the property insurance market, may be eligible for Citizens coverage. The rates on these policies will not be subject to the regular Citizens rate glidepath, which this year limits rate increases to 13 percent. Instead, rates on these risks may not increase of more than 50 percent over the previous year's Citizens rate.
- Removes provisions that created a different eligibility standard for personal lines residential risks that are not primary residences upon receiving an offer of coverage from an authorized insurer or surplus lines insurer.
- Makes the following revisions to the provisions of the bill authorizing approved surplus lines insurers to develop Citizens take-out plan for personal lines risks that are not primary residences:
    - Provides that such take-out offers only make a risk ineligible for Citizens if the offer of coverage is at a rate that is not more than 20 percent greater than the rate for comparable Citizens coverage;
    - Requires that surplus lines insurers making takeout offers must have an "A-" financial strength rating from A.M. Best, must provide data to the Office of Insurance Regulation related to coverage and rates in the take-out plan; and must obtain OIR approval for the take-out plan.
    - Deletes language from the bill that would have authorized Citizens to exempt from Citizens assessments policyholders of surplus lines insurers that make take-out offers.

CS by Banking and Insurance Committee on January 29, 2024
The committee substitute:

- Limits surplus lines take-out offers on Citizens policies to personal lines residential risks that are non-primary residences;
- Eliminates language that would have allowed surplus lines take-out offers to commercial lines residential risks (such as a condominium associations);
- Removes from the bill proposed revisions to the policyholder choice provisions of s. 627.3517, F.S., related to surplus lines take-out offers; and
- Makes conforming changes to the Citizens clearinghouse statute in s. 627.3518, F.S., necessitated by the creation of new eligibility standards for personal lines risks that are not primary residences.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete lines 708 - 2925

and insert:

c. The office may evaluate whether there is a reasonable degree of competition within an individual zip code located in a county that has not been determined by the office to lack a reasonable degree of competition at the county level pursuant to sub-subparagraph b. If the office determines that such zip code lacks a reasonable degree of competition, structures located within that zip code that have a dwelling replacement cost of



$700,000 or more but less than $1 million and single condominium units that have a combined dwelling and contents replacement cost of $700,000 or more but less than $1 million are eligible for coverage from the corporation.

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

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

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after



July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

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

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.~~a.~~ All revenues, assets, liabilities, losses, and expenses of the corporation shall be maintained in the Citizens



account. The Citizens account may provide ~~divided into three separate accounts as follows~~:

a.~~(I) A personal lines account for~~ Personal residential policies that provide ~~issued by the corporation which provides~~ comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

b.~~(II) A commercial lines account for~~ Commercial residential and commercial nonresidential policies that provide ~~issued by the corporation which provides~~ coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

c.~~(III) A coastal account for~~ Personal residential policies and commercial residential and commercial nonresidential property policies that provide ~~issued by the corporation which provides~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002 ~~in the coastal account~~. ~~Effective July 1, 2014,~~ The corporation may



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not offer ~~shall cease offering~~ new commercial residential policies providing multiperil coverage but ~~and~~ shall ~~instead~~ continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may~~, however,~~ continue to renew a commercial residential multiperil policy on a building that was ~~is~~ insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas ~~the personal lines account~~. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.:


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(I) Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(II) Policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(III) Commercial residential wind-only policies;

(IV) Commercial residential policies excluding wind, if offered by the corporation; and

(V) Commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014 ~~It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2.~~

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The area eligible for coverage with the corporation under this sub-subparagraph ~~under the coastal account also~~ includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

3. With respect to a deficit in the Citizens account:

a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

~~b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If no such financing obligations remain outstanding or if the financing documents allow for combining of accounts, the~~



~~corporation may consolidate the three separate accounts into a new account, to be known as the Citizens account, for all revenues, assets, liabilities, losses, and expenses of the corporation. The Citizens account, if established by the corporation, is authorized to provide coverage to the same extent as provided under each of the three separate accounts. The authority to provide coverage under the Citizens account is set forth in subparagraph 4. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account. Once the accounts are combined into one account, this subparagraph and subparagraph 3. shall be replaced in their entirety by subparagraphs 4. and 5.~~

~~c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).~~

~~d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.~~



~~e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.~~

~~f. The income of the corporation may not inure to the benefit of any private person.~~

~~3. With respect to a deficit in an account:~~

~~a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph j., if the remaining projected deficit incurred in the coastal account in a particular calendar year:~~

~~(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.~~

~~(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph e.~~

~~b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the~~


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~~subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.~~

~~c. The corporation may not levy regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. if the three separate accounts in sub-sub-subparagraphs 2.a.(I)-(III) have been consolidated into the Citizens account pursuant to sub-subparagraph 2.b. However, the outstanding balance of any regular assessment levied by the corporation before establishment of the Citizens account remains payable to the corporation.~~

b.~~d.~~ After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a. ~~j.~~, the remaining


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projected deficits in the Citizens ~~personal lines~~ account ~~and in the commercial lines account~~ in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c. ~~e.~~

c.~~e.~~ Upon a determination by the board of governors that a projected deficit in the Citizens ~~an~~ account exceeds the amount that is expected to be recovered through surcharges ~~regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph j.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account ~~all accounts of the corporation~~, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other ~~provision of~~ law, the



corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens ~~applicable~~ account. The aggregate amount of emergency assessments levied for the Citizens ~~an~~ account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens account ~~all accounts~~ of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

d.~~f.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other


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indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency ~~regular~~ assessments under sub-subparagraph c. ~~a. or subparagraph (q)1. and emergency assessments under sub-subparagraph e.~~ Emergency assessments collected under sub-subparagraph c. ~~e.~~ are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

e.~~g.~~ As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of

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business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

f.~~h.~~ The Florida Surplus Lines Service Office shall annually determine ~~annually~~ the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

g.~~i.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for ~~regular assessments and~~ emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

~~j. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such~~



~~premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.~~

~~(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

h.~~k.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

~~4. The Citizens account, if established by the corporation pursuant to sub-subparagraph 2.b., is authorized to provide:~~

~~a. Personal residential policies that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January~~


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~~1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;~~

~~b. Commercial residential and commercial nonresidential policies that provide coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and~~

~~c. Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may not offer new commercial residential policies providing multiperil coverage, but shall continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may continue to renew a commercial residential multiperil policy on a building that was insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida~~



~~Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.: Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; commercial residential wind-only policies; commercial residential policies excluding wind, if offered by the corporation; and commercial~~



~~residential multiperil policies on a building that was insured by the corporation on June 30, 2014. The area eligible for coverage with the corporation under this sub-subparagraph includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.~~

~~5. With respect to a deficit in the Citizens account:~~

~~a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

~~b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a., the remaining projected deficit incurred in the Citizens account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c.~~

~~c. Upon a determination by the board of governors that a~~



~~projected deficit in the Citizens account exceeds the amount that is expected to be recovered through surcharges under sub-subparagraph a., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account, National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines~~



~~Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens account. The aggregate amount of emergency assessments levied for the Citizens account in any calendar year may be less than, but may not exceed the greater of, 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens accounts for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.~~

~~d. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection; or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency~~


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~~assessments under sub-subparagraph c. Emergency assessments collected under sub-subparagraph c. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.~~

~~c. As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.~~

~~f. The Florida Surplus Lines Service Office shall annually determine the aggregate statewide written premium in subject~~



~~lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.~~

~~g. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.~~

~~h. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.~~

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the



private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. The corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota


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share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Approved surplus lines insurer" means an eligible surplus lines insurer that:

(A) Has a financial strength rating of "A-" or higher from A.M. Best Company;

(B) Has a personal lines residential risk program that is managed by a Florida resident surplus lines broker;

(C) Applies to the office to participate in the take-out process to offer coverage to applicants for new coverage from the corporation or current policyholders of the corporation through a take-out plan approved by the office;

(D) Files rates for review as part of a take-out plan with the office. The office shall review whether the premium is more than 20 percent greater than the premium for comparable coverage from the corporation; and

(E) Provides data to the office related to coverage and rates in a format promulgated by the commission.

(III) "Primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(IV) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and



authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However,



the corporation's quota share primary insurance coverage level may not exceed 90 percent.

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

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

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

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



or adjusting claims.

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

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the



office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have


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demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

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

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by



the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

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

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

a. Subject to s. 627.3517, with respect to personal lines residential risks <u>that are primary residences</u>, if the risk is offered coverage from an authorized insurer at the insurer’s approved rate under a standard policy including wind coverage or, if consistent with the insurer’s underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the

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premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation for policies that renew before April 1, 2023; for policies that renew on or after that date, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. This sub-subparagraph applies only to risks that are primary residences.



(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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



equal to the usual and customary commission of the corporation; or

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

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

b. Subject to s. 627.3517, with respect to personal lines residential risks that are not primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate or from an approved surplus lines insurer at the rate approved by the office as part of such surplus lines insurer's take-out plan for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer or approved surplus lines insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer at the insurer's approved rate or an approved surplus lines insurer at the rate approved by the office as part of such insurer's take-out plan, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer or approved surplus lines insurer is more than 20 percent greater than the



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corporation's renewal premium for comparable coverage for policies that renew on or after July 1, 2024. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation. If the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer must:

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



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corporation; or

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

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

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

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

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

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

c.~~b.~~ With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the



risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. A policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's



usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

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

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

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

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

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

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


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d.~~c.~~ For purposes of determining comparable coverage under sub-subparagraphs a.<u>,</u> ~~and~~ b., <u>and c.,</u> the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. For purposes of comparing the premium for comparable coverage under sub-subparagraphs a.<u>,</u> ~~and~~ b., <u>and c.</u> premium includes any surcharge or assessment that is actually applied to such policy. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same Coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer <u>or the approved surplus line insurer</u>; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer <u>or the approved surplus lines insurer</u>; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage on a risk that is located in an area eligible for coverage by the Florida Windstorm Underwriting Association, as that area was defined on January 1, 2002, the premium for the


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corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer or the approved surplus lines insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer or the approved surplus lines insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

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

7. Must provide that if premium and investment income~~:~~

~~a.~~ for the Citizens ~~an~~ account, which are attributable to a particular calendar year, are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens ~~that~~ account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~; or~~

~~b. For the Citizens account, if established by the corporation, which are attributable to a particular calendar year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be~~



~~available to defray deficits in the Citizens account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~.

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

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

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

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

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an


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offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

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

13. ~~Must provide that:~~

~~a. With respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide~~


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~~property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.c. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.c. may not be limited or deferred; or~~

~~b. With respect to the Citizens account, if established by the corporation pursuant to sub-subparagraph (b)2.b., any assessable insurer with a surplus as to policyholders of $25 million or less and writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A limited apportionment company shall collect from its policyholders any~~


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~~emergency assessment imposed under sub-subparagraph (b)5.c. An emergency assessment to be collected from policyholders under sub-subparagraph (b)5.c. may not be limited or deferred.~~

~~14.~~ Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015 by at least three insurers ~~an insurer~~ who are ~~is~~ authorized to write and are ~~is~~ actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

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

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

16.~~17.~~ Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

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

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

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same


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materials as those of the primary dwelling.

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

17.~~18.~~ May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18.~~19.~~ May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

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

20.a.~~21.a. As of January 1, 2012, unless the Citizens account has been established pursuant to sub-subparagraph (b)2.b.,~~ Must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:


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1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 ~~45~~ PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 ~~45~~ PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

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

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

~~b. The corporation must require, if it has established the Citizens account pursuant to sub-subparagraph (b)2.b., that the agent obtain from an applicant for coverage from the corporation the following acknowledgment signed by the applicant, which includes, at a minimum, the following statement:~~


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~~ACKNOWLEDGMENT OF POTENTIAL SURCHARGE~~
~~AND ASSESSMENT LIABILITY:~~

~~1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.~~

~~3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.~~

b.~~c.~~ The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part


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of the first renewal after the effective date of sub-subparagraph a. ~~or sub-subparagraph b., as applicable.~~

c.~~d.~~ The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24), the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057~~, except for resolution of bid protests for which the board would serve as the agency head~~. The executive director of the corporation may assign or appoint a designee to act on his or her behalf.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or


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exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's decision or intended decision to award a contract pursuant to s. 287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health,



safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings~~; the division's applicable bond requirements do not apply~~. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action.

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In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The ~~board, acting as~~ agency head or his or her designee~~,~~ shall consider the recommended order of an administrative law judge ~~in a public meeting~~ and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive.


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The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation’s rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation’s rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board’s recommended rates and the office’s final order regarding the corporation’s filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not


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exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. ~~Twelve percent for 2023.~~

~~b.~~ Thirteen percent for 2024.

b.~~c.~~ Fourteen percent for 2025.

c.~~d.~~ Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. The following new or renewal personal lines policies written on or after November 1, 2023, are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, and may not be charged ~~nor~~ less than, the prior year's established rate for the corporation:

a. Policies that do not cover a primary residence;

b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631;

c. Policies made eligible for coverage from the corporation


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pursuant to sub-subparagraph (a)3.c.; or

d.~~c.~~ Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(o) If coverage in ~~an account, or~~ the Citizens account ~~if established by the corporation,~~ is deactivated pursuant to paragraph (p), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from authorized ~~admitted~~ carriers at their approved ~~filed~~ rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. may ~~shall~~ not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this



subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability of residential property insurance.

(p)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated in ~~an account, or in~~ the Citizens account ~~if established by the corporation,~~ on the basis that the conditions giving rise to its activation no longer exist.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated, if authority to levy exists, as provided in paragraph (b). The


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corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of

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emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.c. ~~(b)3.c.~~, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government may ~~shall~~ not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks



out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments ~~under sub-subparagraph (b)3.a~~. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).


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b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~sub-subparagraph (b)3.e. or sub-subparagraph (b)5.c.~~

4. ~~The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.e. or sub-subparagraph (b)5.c., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).~~

~~5.~~ Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by



the corporation.

5.~~6.~~ Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

6.~~7.~~ For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association become policies of the corporation. All obligations, rights, assets and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and become policies of the corporation. All obligations, rights, assets, and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by


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the corporation on July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association shall take all actions necessary to further evidence the transfers and provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. ~~Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the coastal account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.~~

4. Effective July 1, 2002, a new applicant for property


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insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation does not affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. ~~The coverage provided by the fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter, unless the corporation has established the Citizens account, shall be redesignated as coverage for the coastal account of the corporation. Notwithstanding any other provision of law, the coverage provided by the fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter, unless the corporation has established the Citizens account, shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the coastal account, unless the corporation has established the Citizens account, shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts, unless the corporation has~~



~~established the Citizens account, shall be viewed together, for all fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement.~~ The coverage provided by the fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association to the corporation.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The proceeding does not relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges or other surcharges ~~under sub-subparagraph (b)~~3.j., or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges



or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and



in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided



herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.


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g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the


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files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, a licensed surplus lines agent, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed surplus lines agent or licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured’s or applicant’s underwriting or claims file to the same



extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(z) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and


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Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the Citizens ~~applicable~~ account ~~of the corporation~~. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source



pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the


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coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation pursuant to sub-subparagraph (c)5.d. ~~(c)5.c~~. This subparagraph applies to take-out offers that are part of an application to participate in depopulation submitted to the office on or after January 1, 2023. This subparagraph only applies to a policy that covers a primary residence.

4. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

(nn) The corporation may share its claims data with the National Insurance Crime Bureau, provided that the National Insurance Crime Bureau agrees to maintain the confidentiality of such documents as otherwise provided for in paragraph (x).

(7) TRADEMARKS, COPYRIGHTS, OR PATENTS.—Notwithstanding any other law, the corporation is authorized, in its own name, to:

(a) Perform all things necessary to secure letters of

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patent, copyrights, or trademarks on any work products and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use thereof, on a royalty basis or for such other consideration as the corporation deems proper.

(c) Take any action necessary, including legal action, to protect trademarks, copyrights, or patents against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due the corporation for the manufacture or use thereof by any other party.

(e) Sell any of its trademarks, copyrights, or patents and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties herein conferred upon the corporation in order to administer this subsection.

Section 2. Paragraphs (a), (b), and (c) of subsection (3) and paragraphs (d), (e), and (f) of subsection (6) of section 627.3511, Florida Statutes, are amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

(a) The calculation of an insurer's ~~assessment~~ liability ~~under s. 627.351(6)(b)3.a.~~ shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to in-force policies, exclude such removed policies for the succeeding



3 years, as follows:

1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.

If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation shall pay to the assuming insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the corporation and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of the policy by the corporation which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation are located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation are located in such counties and an additional 50 percent of the risks removed from the corporation are located in other coastal counties.



(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from liability ~~regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, of the Citizens Property Insurance Corporation until the earlier of the following:

1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or

2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.

(c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from liability ~~deficit assessments imposed pursuant to s. 627.351(6)(b)3.a.~~, but not from emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, of the Citizens Property Insurance Corporation attributable to such increase in exposure.

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

(d) The calculation of an insurer's ~~regular assessment~~ liability ~~under s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, shall, with respect to commercial residential policies removed from the corporation under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:

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1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the policies, the policies are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.

(e) An insurer that first wrote commercial residential property coverage in this state on or after June 1, 1996, is exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~, but not from emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, with respect to commercial residential policies until the earlier of:

1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or

2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.

(f) An insurer that is not otherwise exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~ with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s.



627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.e.~~, attributable to such increased exposure.

Section 3. Subsections (5), (6), and (7) of section 627.3518, Florida Statutes, are amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold for applicants for new coverage of a primary residence established in s. 627.351(6)(c)5.a., or for applicants for new coverage of a risk that is not a primary residence established in s. 627.351(6)(c)5.b. Whenever an offer of coverage for a personal lines risk is received for a policyholder of the corporation at renewal from an authorized insurer through the program which is at or below the eligibility threshold for primary residences of policyholders of the corporation established in s. 627.351(6)(c)5.a., or the eligibility threshold for risks that are not primary residences of policyholders of the corporation established in s. 627.351(6)(c)5.b., the risk is not eligible for coverage with the corporation. In the event an offer of coverage for a new applicant is received from an authorized insurer through the program, and the premium offered exceeds the eligibility threshold for applicants for new coverage of a primary residence established in s. 627.351(6)(c)5.a., or the



eligibility threshold for applicants for new coverage on a risk that is not a primary residence established in s. 627.351(6)(c)5.b., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for primary residences of policyholders of the corporation established in s. 627.351(6)(c)5.a., or exceeds the eligibility threshold for risks that are not primary residences of policyholders of the corporation established in s. 627.351(6)(c)5.b., the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) and b.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. As used in this subsection, the term "primary residence" has the same meaning as in s. 627.351(6)(c)2.a.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.b.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold


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or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer’s option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.b.(I)(B) and (II)(B). Contracts



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========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 3 - 65
and insert:
Corporation; amending s. 627.351, F.S.; revising circumstances under which certain insurers' associations must levy market equalization surcharges on policyholders; deleting obsolete language; authorizing the Office of Insurance Regulation to evaluate whether there is a reasonable degree of competition within certain zip codes; providing that certain structures located within certain zip codes are eligible for coverage from the corporation; providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liabilities, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; requiring the inclusion of quota share primary insurance in certain policies; deleting provisions relating to legislative goals; conforming provisions to changes made by the act; revising provisions relating to deficits in certain accounts; revising the definition of the term "assessments"; deleting provisions relating to surcharges and regular assessments upon determination of projected deficits; deleting provisions relating to funds available to the corporation as sources of revenue and bonds; deleting definitions; deleting provisions relating to the duties of the Florida



Surplus Lines Service Office; deleting provisions relating to disposition of excess amounts of assessments and surcharges; defining the terms "approved surplus lines insurer" and "primary residence"; providing applicability of certain provisions relating to personal lines residential risks coverage by the corporation; providing that certain personal lines residential risks are not eligible for any policy issued by the corporation; providing an exception; providing that certain personal lines residential risks are not eligible for coverage with the corporation under certain circumstances; providing an exception; providing that certain risks are eligible for certain standard policies; providing that certain risks are eligible for certain basic polices; requiring the department to determine the type of policy to be provided on the basis of certain standards and practices; providing that certain policyholders do not remain eligible for coverage from the corporation; requiring the insurer to pay the producing agent of record a certain amount or make certain offers under certain circumstances; providing that the producing agent of record is entitled to retain certain commission on the policy; requiring the insurer to pay the producing agent of record a certain amount or make certain offers under certain circumstances; revising the corporation's plan of operation; revising the required statements from applicants for coverage; revising the duties of the


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executive director of the corporation; authorizing the executive director to assign and appoint designees; deleting an applicability provision relating to bond requirements; revising the personal lines polices that are not subject to certain rate limitations; deleting provisions relating to certain insurer assessment deferments; deleting provisions relating to the intangibles of and coverage by the Florida Windstorm Underwriting Association and the corporation coastal account; authorizing the corporation and certain persons to make specified information obtained from underwriting files and confidential claims files available to licensed surplus lines agents; prohibiting such agents from using such information for specified purposes; providing applicability of provisions relating to take-out offers that are part of applications to participate in depopulation; authorizing the corporation to share its claims data with a specified entity; authorizing the corporation to take certain actions relating to trademarks, copyrights, or patents; amending s. 627.3511, F.S.; conforming provisions to changes made by the act; conforming cross-references; amending s. 627.3518, F.S.; revising eligibility requirements for policyholders at renewal and for applicants for new

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete line 2949
and insert:
Section 4. Effective upon becoming a law, paragraph (aa) of subsection (6) of section 627.351, Florida Statutes, is amended to read:
627.351 Insurance risk apportionment plans.—
(6) CITIZENS PROPERTY INSURANCE CORPORATION.—
(aa) Except as otherwise provided in this paragraph, the

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corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure that has a dwelling replacement cost of $600,000 or more.

b. January 1, 2025, for a structure that has a dwelling replacement cost of $500,000 or more.

c. January 1, 2026, for a structure that has a dwelling replacement cost of $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on

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or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders are not required to purchase flood insurance as a condition for maintaining the following policies issued by the corporation:

a. Policies that do not provide coverage for the peril of wind.

b. Policies that provide coverage under a condominium unit owners form.

The flood insurance required under this paragraph must meet, at a minimum, the dwelling coverage available from the National Flood Insurance Program or the requirements of ~~subparagraphs~~ s. 627.715(1)(a)1., 2., and 3.

Section 5. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete lines 66 - 67

and insert:

coverage; defining the term "primary residence";
amending s. 627.351, F.S.; revising a requirement for certain flood insurance; providing effective dates.

By the Committee on Banking and Insurance; and Senator Boyd

597-02636-24 20241716c1

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; providing that certain accounts for Citizens Property Insurance Corporation revenues, assets, liabilities, losses, and expenses are now maintained as the Citizens account; revising the requirements for certain coverages by the corporation; requiring the inclusion of quota share primary insurance in certain policies; deleting provisions relating to legislative goals; revising the definition of the term "assessments"; deleting provisions relating to emergency assessments upon determination of projected deficits; deleting provisions relating to funds available to the corporation as sources of revenue and bonds; deleting definitions; deleting provisions relating to the duties of the Florida Surplus Lines Service Office; deleting provisions relating to disposition of excess amounts of assessments and surcharges; defining the terms "approved surplus lines insurer" and "primary residence"; providing applicability of certain provisions relating to personal lines residential risks coverage by the corporation; revising eligibility for commercial lines residential risks coverage by the corporation; providing that commercial lines residential risks are not eligible for coverage by the corporation under certain circumstances; providing that comparisons of comparable coverages under certain personal lines residential risks and

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597-02636-24 20241716c1

commercial lines residential risks do not apply to policies that do not cover primary residences; revising the corporation's plan of operation; revising the required statements from applicants for coverage; revising the duties of the executive director of the corporation; authorizing the executive director to assign and appoint designees; deleting a applicability provision relating to bond requirements; providing circumstances under which coverage rates are considered not competitive; revising the duties of the Office of Insurance Regulation relating to coverage rates; authorizing the corporation to pursue administrative challenges relating to coverage rates; revising requirements for coverage rate increases and coverage rates; authorizing assessed insureds of certain insurers to be relieved from assessments under certain circumstances; deleting provisions relating to certain insurer assessment deferments; deleting provisions relating to the intangibles of and coverage by the Florida Windstorm Underwriting Association and the corporation coastal account; authorizing the corporation and certain persons to make specified information obtained from underwriting files and confidential claims files available to licensed surplus lines agents; prohibiting such agents from using such information for specified purposes; providing applicability of provisions relating to take-out offers that are part of applications to participate in depopulation; authorizing the

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

corporation to share its claims data with a specified entity; deleting provisions relating to resolutions of disputes and to determinations of risks ineligible for coverage; amending s. 627.3511, F.S.; conforming provisions to changes made by the act; conforming cross-references; amending s. 627.3518, F.S.; revising eligibility requirements for applicants for new coverage; defining the term "primary residence"; providing an effective date.

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

Section 1. Present subsection (7) of section 627.351, Florida Statutes, is redesignated as subsection (8), a new subsection (7) is added to that section, paragraph (nn) is added to subsection (6) of that section, and paragraph (b) of subsection (2) and paragraphs (a), (b), (c), (e), (n) through (q), (v), (w), (x), (z), and (ii) of subsection (6) of that section are amended, to read:

627.351 Insurance risk apportionment plans.—

(2) WINDSTORM INSURANCE RISK APPORTIONMENT.—

(b) The department shall require all insurers holding a certificate of authority to transact property insurance on a direct basis in this state, other than joint underwriting associations and other entities formed pursuant to this section, to provide windstorm coverage to applicants from areas determined to be eligible pursuant to paragraph (c) who in good faith are entitled to, but are unable to procure, such coverage through ordinary means; or it shall adopt a reasonable plan or

plans for the equitable apportionment or sharing among such insurers of windstorm coverage, which may include formation of an association for this purpose. As used in this subsection, the term "property insurance" means insurance on real or personal property, as defined in s. 624.604, including insurance for fire, industrial fire, allied lines, farmowners multiperil, homeowners multiperil, commercial multiperil, and mobile homes, and including liability coverages on all such insurance, but excluding inland marine as defined in s. 624.607(3) and excluding vehicle insurance as defined in s. 624.605(1)(a) other than insurance on mobile homes used as permanent dwellings. The department shall adopt rules that provide a formula for the recovery and repayment of any deferred assessments.

1. For the purpose of this section, properties eligible for such windstorm coverage are defined as dwellings, buildings, and other structures, including mobile homes which are used as dwellings and which are tied down in compliance with mobile home tie-down requirements prescribed by the Department of Highway Safety and Motor Vehicles pursuant to s. 320.8325, and the contents of all such properties. An applicant or policyholder is eligible for coverage only if an offer of coverage cannot be obtained by or for the applicant or policyholder from an admitted insurer at approved rates.

2.a.(I) All insurers required to be members of such association shall participate in its writings, expenses, and losses. Surplus of the association shall be retained for the payment of claims and shall not be distributed to the member insurers. Such participation by member insurers shall be in the proportion that the net direct premiums of each member insurer

written for property insurance in this state during the preceding calendar year bear to the aggregate net direct premiums for property insurance of all member insurers, as reduced by any credits for voluntary writings, in this state during the preceding calendar year. For the purposes of this subsection, the term "net direct premiums" means direct written premiums for property insurance, reduced by premium for liability coverage and for the following if included in allied lines: rain and hail on growing crops; livestock; association direct premiums booked; National Flood Insurance Program direct premiums; and similar deductions specifically authorized by the plan of operation and approved by the department. A member's participation shall begin on the first day of the calendar year following the year in which it is issued a certificate of authority to transact property insurance in the state and shall terminate 1 year after the end of the calendar year during which it no longer holds a certificate of authority to transact property insurance in the state. The commissioner, after review of annual statements, other reports, and any other statistics that the commissioner deems necessary, shall certify to the association the aggregate direct premiums written for property insurance in this state by all member insurers.

(II) Effective July 1, 2002, the association shall operate subject to the supervision and approval of a board of governors who are the same individuals that have been appointed by the Treasurer to serve on the board of governors of the Citizens Property Insurance Corporation.

(III) The plan of operation shall provide a formula whereby a company voluntarily providing windstorm coverage in affected

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areas will be relieved wholly or partially from apportionment of a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

(IV) A company which is a member of a group of companies under common management may elect to have its credits applied on a group basis, and any company or group may elect to have its credits applied to any other company or group.

(V) There shall be no credits or relief from apportionment to a company for emergency assessments collected from its policyholders under sub-sub-subparagraph d.(III).

(VI) The plan of operation may also provide for the award of credits, for a period not to exceed 3 years, from a regular assessment pursuant to sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II) as an incentive for taking policies out of the Residential Property and Casualty Joint Underwriting Association. In order to qualify for the exemption under this sub-sub-subparagraph, the take-out plan must provide that at least 40 percent of the policies removed from the Residential Property and Casualty Joint Underwriting Association cover risks located in Miami-Dade, Broward, and Palm Beach Counties or at least 30 percent of the policies so removed cover risks located in Miami-Dade, Broward, and Palm Beach Counties and an additional 50 percent of the policies so removed cover risks located in other coastal counties, and must also provide that no more than 15 percent of the policies so removed may exclude windstorm coverage. With the approval of the department, the association may waive these geographic criteria for a take-out plan that removes at least the lesser of 100,000 Residential Property and Casualty Joint Underwriting Association policies or

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15 percent of the total number of Residential Property and Casualty Joint Underwriting Association policies, provided the governing board of the Residential Property and Casualty Joint Underwriting Association certifies that the take-out plan will materially reduce the Residential Property and Casualty Joint Underwriting Association's 100-year probable maximum loss from hurricanes. With the approval of the department, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies removed from the Residential Property and Casualty Joint Underwriting Association.

b. Assessments to pay deficits in the association under this subparagraph shall be included as an appropriate factor in the making of rates as provided in s. 627.3512.

c. The Legislature finds that the potential for unlimited deficit assessments under this subparagraph may induce insurers to attempt to reduce their writings in the voluntary market, and that such actions would worsen the availability problems that the association was created to remedy. It is the intent of the Legislature that insurers remain fully responsible for paying regular assessments and collecting emergency assessments for any deficits of the association; however, it is also the intent of the Legislature to provide a means by which assessment liabilities may be amortized over a period of years.

d.(I) When the deficit incurred in a particular calendar year is 10 percent or less of the aggregate statewide direct

written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the deficit.

(II) When the deficit incurred in a particular calendar year exceeds 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for all member insurers, the association shall levy an assessment on member insurers in an amount equal to the greater of 10 percent of the deficit or 10 percent of the aggregate statewide direct written premium for property insurance for the prior calendar year for member insurers. Any remaining deficit shall be recovered through emergency assessments under sub-sub-subparagraph (III).

(III) Upon a determination by the board of directors that a deficit exceeds the amount that will be recovered through regular assessments on member insurers, pursuant to sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the board shall levy, after verification by the department, emergency assessments to be collected by member insurers and by underwriting associations created pursuant to this section which write property insurance, upon issuance or renewal of property insurance policies other than National Flood Insurance policies in the year or years following levy of the regular assessments. The amount of the emergency assessment collected in a particular year shall be a uniform percentage of that year's direct written premium for property insurance for all member insurers and underwriting associations, excluding National Flood Insurance policy premiums, as annually determined by the board and verified by the department. The department shall verify the

arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. Notwithstanding any other provision of law, each member insurer and each underwriting association created pursuant to this section shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. The emergency assessments so collected shall be transferred directly to the association on a periodic basis as determined by the association. The aggregate amount of emergency assessments levied under this sub-sub-subparagraph in any calendar year may not exceed the greater of 10 percent of the amount needed to cover the original deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing of the original deficit, or 10 percent of the aggregate statewide direct written premium for property insurance written by member insurers and underwriting associations for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit. The board may pledge the proceeds of the emergency assessments under this sub-sub-subparagraph as the source of revenue for bonds, to retire any other debt incurred as a result of the deficit or events giving rise to the deficit, or in any other way that the board determines will efficiently recover the deficit. The emergency assessments under this sub-sub-subparagraph shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the

document governing such bonds or other indebtedness. Emergency assessments collected under this sub-sub-subparagraph are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium.

(IV) Each member insurer's share of the total regular assessments under sub-sub-subparagraph (I) or sub-sub-subparagraph (II) shall be in the proportion that the insurer's net direct premium for property insurance in this state, for the year preceding the assessment bears to the aggregate statewide net direct premium for property insurance of all member insurers, as reduced by any credits for voluntary writings for that year.

(V) If regular deficit assessments are made under sub-sub-subparagraph (I) or sub-sub-subparagraph (II)~~, or by the Residential Property and Casualty Joint Underwriting Association under sub-subparagraph (6)(b)3.a.~~, the association shall levy upon the association's policyholders, as part of its next rate filing, or by a separate rate filing solely for this purpose, a market equalization surcharge in a percentage equal to the total amount of such regular assessments divided by the aggregate statewide direct written premium for property insurance for member insurers for the prior calendar year. Market equalization surcharges under this sub-sub-subparagraph are not considered premium and are not subject to commissions, fees, or premium taxes; however, failure to pay a market equalization surcharge shall be treated as failure to pay premium.

e. The governing body of any unit of local government, any

residents of which are insured under the plan, may issue bonds as defined in s. 125.013 or s. 166.101 to fund an assistance program, in conjunction with the association, for the purpose of defraying deficits of the association. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the association, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and the protection and preservation of the economic stability of insurers operating in this state, and declaring it an essential public purpose to permit certain municipalities or counties to issue bonds as will provide relief to claimants and policyholders of the association and insurers responsible for apportionment of plan losses. Any such unit of local government may enter into such contracts with the association and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this sub-subparagraph shall be payable from and secured by moneys received by the association from assessments under this subparagraph, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such

bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds. If any of the bonds remain unsold 60 days after issuance, the department shall require all insurers subject to assessment to purchase the bonds, which shall be treated as admitted assets; each insurer shall be required to purchase that percentage of the unsold portion of the bond issue that equals the insurer's relative share of assessment liability under this subsection. An insurer shall not be required to purchase the bonds to the extent that the department determines that the purchase would endanger or impair the solvency of the insurer. The authority granted by this sub-subparagraph is additional to any bonding authority granted by subparagraph 6.

3. The plan shall also provide that any member with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the department, within the first 90 days of each calendar year, to qualify as a limited apportionment company. The apportionment of such a member company in any calendar year for which it is qualified shall not exceed its gross participation, which shall not be affected by the formula for voluntary writings. In no event shall a limited apportionment company be required to participate in any apportionment of losses pursuant to sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II) in the aggregate which exceeds $50 million after payment of available plan funds in any calendar year. However, a limited apportionment company shall collect from its policyholders any emergency assessment imposed

under sub-sub-subparagraph 2.d.(III). The plan shall provide that, if the department determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the department may direct that all or part of such assessment be deferred. However, there shall be no limitation or deferment of an emergency assessment to be collected from policyholders under sub-sub-subparagraph 2.d.(III).

4. The plan shall provide for the deferment, in whole or in part, of a regular assessment of a member insurer under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II), but not for an emergency assessment collected from policyholders under sub-sub-subparagraph 2.d.(III), if, in the opinion of the commissioner, payment of such regular assessment would endanger or impair the solvency of the member insurer. In the event a regular assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II).

5.a. The plan of operation may include deductibles and rules for classification of risks and rate modifications consistent with the objective of providing and maintaining funds sufficient to pay catastrophe losses.

b. It is the intent of the Legislature that the rates for coverage provided by the association be actuarially sound and not competitive with approved rates charged in the admitted voluntary market such that the association functions as a residual market mechanism to provide insurance only when the

insurance cannot be procured in the voluntary market. The plan of operation shall provide a mechanism to assure that, beginning no later than January 1, 1999, the rates charged by the association for each line of business are reflective of approved rates in the voluntary market for hurricane coverage for each line of business in the various areas eligible for association coverage.

c. The association shall provide for windstorm coverage on residential properties in limits up to $10 million for commercial lines residential risks and up to $1 million for personal lines residential risks. If coverage with the association is sought for a residential risk valued in excess of these limits, coverage shall be available to the risk up to the replacement cost or actual cash value of the property, at the option of the insured, if coverage for the risk cannot be located in the authorized market. The association must accept a commercial lines residential risk with limits above $10 million or a personal lines residential risk with limits above $1 million if coverage is not available in the authorized market. The association may write coverage above the limits specified in this subparagraph with or without facultative or other reinsurance coverage, as the association determines appropriate.

d. The plan of operation must provide objective criteria and procedures, approved by the department, to be uniformly applied for all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following shall be considered:

(I) Whether the likelihood of a loss for the individual

risk is substantially higher than for other risks of the same class; and

(II) Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the association pursuant to such criteria and procedures must be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

e. If the risk accepts an offer of coverage through the market assistance program or through a mechanism established by the association, either before the policy is issued by the association or during the first 30 days of coverage by the association, and the producing agent who submitted the application to the association is not currently appointed by the insurer, the insurer shall:

(I) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance

with sub-sub-subparagraph (I). Subject to the provisions of s. 627.3517, the policies issued by the association must provide that if the association obtains an offer from an authorized insurer to cover the risk at its approved rates under either a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the department, a basic policy including wind coverage, the risk is no longer eligible for coverage through the association. Upon termination of eligibility, the association shall provide written notice to the policyholder and agent of record stating that the association policy must be canceled as of 60 days after the date of the notice because of the offer of coverage from an authorized insurer. Other provisions of the insurance code relating to cancellation and notice of cancellation do not apply to actions under this sub-subparagraph.

f. When the association enters into a contractual agreement for a take-out plan, the producing agent of record of the association policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(I) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the association; or

(II) Offer to allow the producing agent of record of the association policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer's or the association's usual and customary commission for the type of policy written.

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

6.a. The plan of operation may authorize the formation of a private nonprofit corporation, a private nonprofit unincorporated association, a partnership, a trust, a limited liability company, or a nonprofit mutual company which may be empowered, among other things, to borrow money by issuing bonds or by incurring other indebtedness and to accumulate reserves or funds to be used for the payment of insured catastrophe losses. The plan may authorize all actions necessary to facilitate the issuance of bonds, including the pledging of assessments or other revenues.

b. Any entity created under this subsection, or any entity formed for the purposes of this subsection, may sue and be sued, may borrow money; issue bonds, notes, or debt instruments; pledge or sell assessments, market equalization surcharges and other surcharges, rights, premiums, contractual rights, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, and other assets as security for such bonds, notes, or debt instruments; enter into any contracts or agreements necessary or proper to accomplish such borrowings; and take other actions necessary to carry out the purposes of this subsection. The association may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (6)(q)2., in the absence of a hurricane or other weather-related event, upon a determination by the association subject to approval by

the department that such action would enable it to efficiently meet the financial obligations of the association and that such financings are reasonably necessary to effectuate the requirements of this subsection. Any such entity may accumulate reserves and retain surpluses as of the end of any association year to provide for the payment of losses incurred by the association during that year or any future year. The association shall incorporate and continue the plan of operation and articles of agreement in effect on the effective date of chapter 76-96, Laws of Florida, to the extent that it is not inconsistent with chapter 76-96, and as subsequently modified consistent with chapter 76-96. The board of directors and officers currently serving shall continue to serve until their successors are duly qualified as provided under the plan. The assets and obligations of the plan in effect immediately prior to the effective date of chapter 76-96 shall be construed to be the assets and obligations of the successor plan created herein.

c. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness issued or incurred by the association or any other entity created under this subsection.

7. On such coverage, an agent’s remuneration shall be that amount of money payable to the agent by the terms of his or her contract with the company with which the business is placed. However, no commission will be paid on that portion of the premium which is in excess of the standard premium of that

company.

8. Subject to approval by the department, the association may establish different eligibility requirements and operational procedures for any line or type of coverage for any specified eligible area or portion of an eligible area if the board determines that such changes to the eligibility requirements and operational procedures are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods would continue to have access to coverage from the association. When coverage is sought in connection with a real property transfer, such requirements and procedures shall not provide for an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

9. Notwithstanding any other provision of law:

a. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the association created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the association shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the association under the laws of this state or any other applicable laws.

b. No such proceeding shall relieve the association of its

obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, market equalization or other surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or any other rights, revenues, or other assets of the association pledged.

c. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, emergency assessments, market equalization or renewal surcharges, projected recoveries from the Florida Hurricane Catastrophe Fund, reinsurance recoverables, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of or after any such proceeding shall continue unaffected by such proceeding.

d. As used in this subsection, the term "financing documents" means any agreement, instrument, or other document now existing or hereafter created evidencing any bonds or other indebtedness of the association or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the association are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation of the association related to such bonds or indebtedness.

e. Any such pledge or sale of assessments, revenues, contract rights or other rights or assets of the association shall constitute a lien and security interest, or sale, as the

case may be, that is immediately effective and attaches to such assessments, revenues, contract, or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the association or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, contract, or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

f. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, agents or employees of the association, members of the board of directors of the association, or the department or its representatives, for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for breach of any contract or agreement pertaining to insurance, or any willful tort.

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance

coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of the state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends, therefore, that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this government entity to have the maximum financial resources to pay claims following a catastrophic hurricane, it is the intent of the Legislature that

the corporation continue to be an integral part of the state and that the income of the corporation be exempt from federal income taxation and that interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner, mobile home owner, dwelling, tenant, condominium unit owner, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

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

a. ~~Effective January 1, 2014, a structure that has a dwelling replacement cost of $1 million or more, or a single condominium unit that has a combined dwelling and contents~~

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

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

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

~~d.~~ Effective January 1, 2017, a structure that has a dwelling replacement cost of $700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of $700,000 or more, is not eligible for

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coverage by the corporation. ~~Such dwellings insured by the corporation on December 31, 2016, may continue to be covered by the corporation until the end of the policy term.~~

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

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

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

protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

b. Any major structure, as defined in s. 161.54(6)(a), that is newly constructed, or rebuilt, repaired, restored, or remodeled to increase the total square footage of finished area by more than 25 percent, pursuant to a permit applied for after July 1, 2015, is not eligible for coverage by the corporation if the structure is seaward of the coastal construction control line established pursuant to s. 161.053 or is within the Coastal Barrier Resources System as designated by 16 U.S.C. ss. 3501-3510.

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

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers; however, insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a

certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.~~a.~~ All revenues, assets, liabilities, losses, and expenses of the corporation shall be maintained in the Citizens account. The Citizens account may provide ~~divided into three separate accounts as follows~~:

a.~~(I) A personal lines account for~~ Personal residential policies that provide ~~issued by the corporation which provides~~ comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

b.~~(II) A commercial lines account for~~ Commercial residential and commercial nonresidential policies that provide ~~issued by the corporation which provides~~ coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

c.~~(III) A coastal account for~~ Personal residential policies and commercial residential and commercial nonresidential property policies that provide ~~issued by the corporation which provides~~ coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm

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Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002 ~~in the coastal account~~. ~~Effective July 1, 2014,~~ The corporation may not offer ~~shall cease offering~~ new commercial residential policies providing multiperil coverage but ~~and~~ shall ~~instead~~ continue to offer commercial residential wind-only policies, and may offer commercial residential policies excluding wind. However, the corporation may~~, however,~~ continue to renew a commercial residential multiperil policy on a building that was ~~is~~ insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas ~~the personal lines account~~. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also

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purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.:

(I) Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(II) Policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002;

(III) Commercial residential wind-only policies;

(IV) Commercial residential policies excluding wind, if offered by the corporation; and

(V) Commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014 ~~It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage~~

~~in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2.~~

The area eligible for coverage with the corporation under this sub-subparagraph ~~under the coastal account also~~ includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

3. With respect to a deficit in the Citizens account:

a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium

~~b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If no such financing obligations remain outstanding or if the financing documents allow for combining of accounts, the corporation may consolidate the three separate accounts into a new account, to be known as the Citizens account, for all revenues, assets, liabilities, losses, and expenses of the corporation. The Citizens account, if established by the corporation, is authorized to provide coverage to the same extent as provided under each of the three separate accounts. The authority to provide coverage under the Citizens account is set forth in subparagraph 4. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan for consolidating the three separate accounts into a single account. Once the accounts are combined into one account, this subparagraph and subparagraph 3. shall be replaced in their entirety by subparagraphs 4. and 5.~~

~~c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).~~

~~d. Revenues, assets, liabilities, losses, and expenses not attributable to particular accounts shall be prorated among the accounts.~~

~~e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.~~

~~f. The income of the corporation may not inure to the benefit of any private person.~~

~~3. With respect to a deficit in an account:~~

~~a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph j., if the remaining projected deficit incurred in the coastal account in a particular calendar year:~~

~~(I) Is not greater than 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.~~

~~(II) Exceeds 2 percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 percent of the projected deficit or 2 percent of the aggregate statewide direct~~

~~written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph c.~~

~~b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.~~

~~c. The corporation may not levy regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. if the three separate accounts in sub-sub-~~

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~~subparagraphs 2.a.(I)-(III) have been consolidated into the Citizens account pursuant to sub-subparagraph 2.b. However, the outstanding balance of any regular assessment levied by the corporation before establishment of the Citizens account remains payable to the corporation.~~

b.~~d.~~ After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a. ~~j.~~, the remaining projected deficits in the Citizens ~~personal lines~~ account ~~and in the commercial lines account~~ in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c. ~~c.~~

c.~~e.~~ Upon a determination by the board of governors that a projected deficit in the Citizens ~~an~~ account exceeds the amount that is expected to be recovered through surcharges ~~regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph j.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account ~~all accounts of the corporation~~, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the

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information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other ~~provision of~~ law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens ~~applicable~~ account. The aggregate amount of emergency assessments levied for the Citizens ~~an~~ account in any calendar year may be less than but may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens account ~~all accounts~~ of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with

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financing the deficit.

d.~~f.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency ~~regular~~ assessments under sub-subparagraph c. ~~a. or subparagraph (q)1. and emergency assessments under sub-subparagraph e.~~ Emergency assessments collected under sub-subparagraph c. ~~e.~~ are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

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e.~~g.~~ As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

f.~~h.~~ The Florida Surplus Lines Service Office shall annually determine ~~annually~~ the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

g.~~i.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for ~~regular assessments and~~ emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by

the corporation.

~~j. Upon determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.~~

~~(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.~~

h.~~k.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding

debt.

~~4. The Citizens account, if established by the corporation pursuant to sub-subparagraph 2.b., is authorized to provide:~~

~~a. Personal residential policies that provide comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;~~

~~b. Commercial residential and commercial nonresidential policies that provide coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and~~

~~c. Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and shall offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002. The corporation may not offer new commercial residential policies providing multiperil coverage, but shall continue to offer commercial residential wind-only policies, and may offer~~

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~~commercial residential policies excluding wind. However, the corporation may continue to renew a commercial residential multiperil policy on a building that was insured by the corporation on June 30, 2014, under a multiperil policy. In issuing multiperil coverage under this sub-subparagraph, the corporation may use its approved policy forms and rates for risks located in areas not eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. The following policies, which provide coverage only for the peril of wind, must also include quota share primary insurance under subparagraph (c)2.: Personal residential policies and commercial residential and commercial nonresidential property policies that provide coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January~~

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~~1, 2002; policies that provide multiperil coverage, if offered by the corporation, and policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002; commercial residential wind-only policies; commercial residential policies excluding wind, if offered by the corporation; and commercial residential multiperil policies on a building that was insured by the corporation on June 30, 2014. The area eligible for coverage with the corporation under this sub-subparagraph includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.~~

~~5. With respect to a deficit in the Citizens account:~~

~~a. Upon a determination by the board of governors that the Citizens account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.~~

~~(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such premium, which funds shall be used to offset the deficit.~~

~~(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.~~

~~(III) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure~~

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~~to pay the surcharge shall be treated as failure to pay premium.~~

~~b. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph a., the remaining projected deficit incurred in the Citizens account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph c.~~

~~c. Upon a determination by the board of governors that a projected deficit in the Citizens account exceeds the amount that is expected to be recovered through surcharges under sub-subparagraph a., the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance Program policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and the Citizens account, National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date must be at least 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other law, the corporation and each assessable insurer that~~

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~~writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the Citizens account. The aggregate amount of emergency assessments levied for the Citizens account in any calendar year may be less than, but may not exceed the greater of, 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit or 10 percent of the aggregate statewide direct written premium for subject lines of business and the Citizens accounts for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.~~

~~d. The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection; or to retire~~

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~~any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes emergency assessments under sub-subparagraph c. Emergency assessments collected under sub-subparagraph c. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.~~

~~c. As used in this subsection and for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as~~

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~~accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.~~

~~f. The Florida Surplus Lines Service Office shall annually determine the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.~~

~~g. The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.~~

~~h. If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan year deficits or to reduce outstanding debt.~~

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and

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casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage by the Florida Windstorm Underwriting Association, as those areas were defined on January 1, 2002.

f. The corporation may adopt variations of the policy forms

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listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. The corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Approved surplus lines insurer" means an eligible surplus lines insurer:

(A) That has a financial strength rating of "A" or higher from A.M. Best Company;

(B) That has a personal lines residential risk program that is managed by a Florida resident surplus lines broker; and

(C) That offers coverage to applicants for new coverage from the corporation or current policyholders of the corporation through a take-out plan approved by the office.

(III) "Primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(IV) ~~(I)~~ "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and

authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

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

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However,

the corporation's quota share primary insurance coverage level may not exceed 90 percent.

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

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

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

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

or adjusting claims.

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

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the

office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have

demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

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

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by

the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

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

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

a. Subject to s. 627.3517, with respect to personal lines residential risks that are primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the

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premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation for policies that renew before April 1, 2023; for policies that renew on or after that date, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term. This sub-subparagraph applies only to risks that are primary residences.

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(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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

equal to the usual and customary commission of the corporation; or

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

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

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, the risk is not eligible for coverage with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the corporation's renewal premium for comparable coverage. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. A policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the policy term. However, any policy removed from the corporation through an

assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

(A) Pay to the producing agent of record, for the first

year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

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

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

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. For purposes of comparing the premium for comparable coverage under sub-subparagraphs a. and b., premium includes any surcharge or assessment that is actually applied to such policy. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same Coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the

extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage on a risk that is located in an area eligible for coverage by the Florida Windstorm Underwriting Association, as that area was defined on January 1, 2002, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate. However, notwithstanding any other law, this sub-subparagraph does not apply to a personal lines residential policy that does not cover a primary residence.

d. Subject to s. 627.3517, with respect to personal lines residential risks that are not primary residences, if the risk is offered coverage from an authorized insurer at the insurer's approved rate or from an approved surplus lines insurer at the

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rate approved by the office as part of such surplus lines insurer's take-out plan for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation. Whenever an offer of coverage for a personal lines residential risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer at the insurer's approved rate or an approved surplus lines insurer at the rate approved by the office as part of such insurer's take-out plan, the risk is not eligible for coverage with the corporation for policies that renew on or after July 1, 2024. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation. If the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices. A policyholder removed from the corporation through an assumption agreement does not remain eligible for coverage from the corporation after the end of the policy term. However, any policy removed from the corporation through an assumption agreement remains on the corporation's policy forms through the end of the policy term.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before

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a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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

(B) Offer to allow the producing agent of record to

continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

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

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

7. Must provide that if premium and investment income:

~~a.~~ for the Citizens ~~an~~ account, which are attributable to a particular calendar year, are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens ~~that~~ account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~; or~~

~~b. For the Citizens account, if established by the corporation, which are attributable to a particular calendar year are in excess of projected losses and expenses for the Citizens account attributable to that year, such excess shall be held in surplus in the Citizens account. Such surplus must be available to defray deficits in the Citizens account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year~~.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an

individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

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

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

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

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors. If catastrophe reinsurance is not available at reasonable rates, the corporation need not purchase it, but the corporation shall include the costs of reinsurance to cover its projected 100-year probable maximum loss in its rate calculations even if it does not purchase catastrophe reinsurance.

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

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be

replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

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

13. ~~Must provide that:~~

~~a. With respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the~~

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

~~b. With respect to the Citizens account, if established by the corporation pursuant to sub-subparagraph (b)2.b., any assessable insurer with a surplus as to policyholders of $25 million or less and writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)5.c. An emergency assessment to be collected from policyholders under sub-subparagraph (b)5.c. may not be limited or deferred.~~

~~14.~~ Must provide that the corporation appoint as its licensed agents only those agents who throughout such appointments also hold an appointment as defined in s. 626.015

by at least three insurers ~~an insurer~~ who are ~~is~~ authorized to write and are ~~is~~ actually writing or renewing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

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

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

16.~~17.~~ Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following attached structures:

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

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

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

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

17.~~18.~~ May provide such limits of coverage as the board

determines, consistent with the requirements of this subsection.

18.~~19.~~ May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

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

20.a.~~21.a. As of January 1, 2012, unless the Citizens account has been established pursuant to sub-subparagraph (b)2.b.,~~ Must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND

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ASSESSMENTS COULD BE AS HIGH AS 25 ~~45~~ PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 ~~45~~ PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

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

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

~~b. The corporation must require, if it has established the Citizens account pursuant to sub-subparagraph (b)2.b., that the agent obtain from an applicant for coverage from the corporation the following acknowledgment signed by the applicant, which includes, at a minimum, the following statement:~~

~~ACKNOWLEDGMENT OF POTENTIAL SURCHARGE~~
~~AND ASSESSMENT LIABILITY:~~

~~1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON,~~

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~~MY POLICY COULD BE SUBJECT TO SURCHARGES AND ASSESSMENTS, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES AND ASSESSMENTS COULD BE AS HIGH AS 25 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 15 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.~~

~~3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.~~

~~4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.~~

b.~~c.~~ The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of sub-subparagraph a. ~~or sub-subparagraph b., as applicable.~~

c.~~d.~~ The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster in the evaluation of individual claims are not subject to the procurement requirements of this section. Additionally, the procurement of financial services providers and underwriters must be made pursuant to s. 627.3513. Contracts for goods or services valued at or more than $100,000 are subject to approval by the board.

1. The corporation is an agency for purposes of s. 287.057, except that, for purposes of s. 287.057(24), the corporation is an eligible user.

a. The authority of the Department of Management Services and the Chief Financial Officer under s. 287.057 extends to the corporation as if the corporation were an agency.

b. The executive director of the corporation is the agency head under s. 287.057~~, except for resolution of bid protests for which the board would serve as the agency head~~. The executive director of the corporation may assign or appoint a designee to act on his or her behalf.

2. The corporation must provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. Such notice must contain the following statement: "Failure to file a protest within the time prescribed in this section constitutes a waiver of proceedings."

a. A person adversely affected by the corporation's decision or intended decision to award a contract pursuant to s.

287.057(1) or (3)(c) who elects to challenge the decision must file a written notice of protest with the executive director of the corporation within 72 hours after the corporation posts a notice of its decision or intended decision. For a protest of the terms, conditions, and specifications contained in a solicitation, including provisions governing the methods for ranking bids, proposals, replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest must be filed in writing within 72 hours after posting the solicitation. Saturdays, Sundays, and state holidays are excluded in the computation of the 72-hour time period.

b. A formal written protest must be filed within 10 days after the date the notice of protest is filed. The formal written protest must state with particularity the facts and law upon which the protest is based. Upon receipt of a formal written protest that has been timely filed, the corporation must stop the solicitation or contract award process until the subject of the protest is resolved by final board action unless the executive director sets forth in writing particular facts and circumstances that require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(I) The corporation must provide an opportunity to resolve the protest by mutual agreement between the parties within 7 business days after receipt of the formal written protest.

(II) If the subject of a protest is not resolved by mutual agreement within 7 business days, the corporation's board must

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transmit the protest to the Division of Administrative Hearings and contract with the division to conduct a hearing to determine the merits of the protest and to issue a recommended order. The contract must provide for the corporation to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs in the manner set forth in s. 120.65(9). The division has jurisdiction to determine the facts and law concerning the protest and to issue a recommended order. The division's rules and procedures apply to these proceedings~~, the division's applicable bond requirements do not apply~~. The protest must be heard by the division at a publicly noticed meeting in accordance with procedures established by the division.

c. In a protest of an invitation-to-bid or request-for-proposals procurement, submissions made after the bid or proposal opening which amend or supplement the bid or proposal may not be considered. In protesting an invitation-to-negotiate procurement, submissions made after the corporation announces its intent to award a contract, reject all replies, or withdraw the solicitation that amends or supplements the reply may not be considered. Unless otherwise provided by law, the burden of proof rests with the party protesting the corporation's action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge must conduct a de novo proceeding to determine whether the corporation's proposed action is contrary to the corporation's governing statutes, the corporation's rules or policies, or the solicitation specifications. The standard of proof for the

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proceeding is whether the corporation's action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended corporation action to reject all bids, proposals, or replies, the standard of review by the board is whether the corporation's intended action is illegal, arbitrary, dishonest, or fraudulent.

d. Failure to file a notice of protest or failure to file a formal written protest constitutes a waiver of proceedings.

3. The ~~board, acting as~~ agency head or his or her designee~~,~~ shall consider the recommended order of an administrative law judge ~~in a public meeting~~ and take final action on the protest. Any further legal remedy lies with the First District Court of Appeal.

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive.

The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation

may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. ~~Twelve percent for 2023.~~

~~b.~~ Thirteen percent for 2024.

b.~~c.~~ Fourteen percent for 2025.

c.~~d.~~ Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. The following new or renewal personal lines policies written on or after November 1, 2023, are not subject to the rate increase limitations in subparagraph 5., but may not be charged more than 50 percent above, and may not be charged ~~nor~~ less than, the prior year's established rate for the corporation:

a. Policies that do not cover a primary residence;

b. New policies under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631; or

c. Subsequent renewals of those policies, including the new policies in sub-subparagraph b., under which the coverage for the insured risk, before the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(o) If coverage in ~~an account, or~~ the Citizens account ~~if established by the corporation,~~ is deactivated pursuant to paragraph (p), coverage through the corporation shall be reactivated by order of the office only under one of the following circumstances:

1. If the market assistance plan receives a minimum of 100 applications for coverage within a 3-month period, or 200 applications for coverage within a 1-year period or less for residential coverage, unless the market assistance plan provides a quotation from authorized ~~admitted~~ carriers at their approved ~~filed~~ rates for at least 90 percent of such applicants. Any market assistance plan application that is rejected because an individual risk is so hazardous as to be uninsurable using the criteria specified in subparagraph (c)8. shall not be included in the minimum percentage calculation provided herein. In the event that there is a legal or administrative challenge to a determination by the office that the conditions of this subparagraph have been met for eligibility for coverage in the corporation, any eligible risk may obtain coverage during the pendency of such challenge.

2. In response to a state of emergency declared by the Governor under s. 252.36, the office may activate coverage by order for the period of the emergency upon a finding by the office that the emergency significantly affects the availability

of residential property insurance.

(p)1. The corporation shall file with the office quarterly statements of financial condition, an annual statement of financial condition, and audited financial statements in the manner prescribed by law. In addition, the corporation shall report to the office monthly on the types, premium, exposure, and distribution by county of its policies in force, and shall submit other reports as the office requires to carry out its oversight of the corporation.

2. The activities of the corporation shall be reviewed at least annually by the office to determine whether coverage shall be deactivated in ~~an account, or in~~ the Citizens account ~~if established by the corporation,~~ on the basis that the conditions giving rise to its activation no longer exist.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated, if authority to levy exists, as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied

as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants

and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.c. ~~(b)3.c.~~, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments ~~under sub-subparagraph (b)3.a~~. In addition, in the

event policies are taken out by an approved surplus lines insurer, such insurer's assessable insureds may also be relieved wholly or partially from assessments. However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may

extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~sub-subparagraph (b)3.c. or sub-subparagraph (b)5.c.~~

4. ~~The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.c. or sub-subparagraph (b)5.c., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).~~

~~5.~~ Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

5.~~6.~~ Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer

and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

6.~~7.~~ For a policy taken out, assumed, or removed from the corporation, the insurer may, for a period of no more than 3 years, continue to use any of the corporation's policy forms or endorsements that apply to the policy taken out, removed, or assumed without obtaining approval from the office for use of such policy form or endorsement.

(v)1. Effective July 1, 2002, policies of the Residential Property and Casualty Joint Underwriting Association become policies of the corporation. All obligations, rights, assets and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them become those of the corporation as of July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

2. Effective July 1, 2002, policies of the Florida Windstorm Underwriting Association are transferred to the corporation and become policies of the corporation. All obligations, rights, assets, and liabilities of the association, including bonds, note and debt obligations, and the financing documents pertaining to them are transferred to and assumed by the corporation on July 1, 2002. The corporation is not required to issue endorsements or certificates of assumption to insureds during the remaining term of in-force transferred policies.

3. The Florida Windstorm Underwriting Association and the

Residential Property and Casualty Joint Underwriting Association shall take all actions necessary to further evidence the transfers and provide the documents and instruments of further assurance as may reasonably be requested by the corporation for that purpose. The corporation shall execute assumptions and instruments as the trustees or other parties to the financing documents of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association may reasonably request to further evidence the transfers and assumptions, which transfers and assumptions, however, are effective on the date provided under this paragraph whether or not, and regardless of the date on which, the assumptions or instruments are executed by the corporation. ~~Subject to the relevant financing documents pertaining to their outstanding bonds, notes, indebtedness, or other financing obligations, the moneys, investments, receivables, choses in action, and other intangibles of the Florida Windstorm Underwriting Association shall be credited to the coastal account of the corporation, and those of the personal lines residential coverage account and the commercial lines residential coverage account of the Residential Property and Casualty Joint Underwriting Association shall be credited to the personal lines account and the commercial lines account, respectively, of the corporation.~~

4. Effective July 1, 2002, a new applicant for property insurance coverage who would otherwise have been eligible for coverage in the Florida Windstorm Underwriting Association is eligible for coverage from the corporation as provided in this subsection.

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5. The transfer of all policies, obligations, rights, assets, and liabilities from the Florida Windstorm Underwriting Association to the corporation and the renaming of the Residential Property and Casualty Joint Underwriting Association as the corporation does not affect the coverage with respect to covered policies as defined in s. 215.555(2)(c) provided to these entities by the Florida Hurricane Catastrophe Fund. ~~The coverage provided by the fund to the Florida Windstorm Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter, unless the corporation has established the Citizens account, shall be redesignated as coverage for the coastal account of the corporation. Notwithstanding any other provision of law, the coverage provided by the fund to the Residential Property and Casualty Joint Underwriting Association based on its exposures as of June 30, 2002, and each June 30 thereafter, unless the corporation has established the Citizens account, shall be transferred to the personal lines account and the commercial lines account of the corporation. Notwithstanding any other provision of law, the coastal account, unless the corporation has established the Citizens account, shall be treated, for all Florida Hurricane Catastrophe Fund purposes, as if it were a separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement. Likewise, the personal lines and commercial lines accounts, unless the corporation has established the Citizens account, shall be viewed together, for all fund purposes, as if the two accounts were one and represent a single, separate participating insurer with its own exposures, reimbursement premium, and loss reimbursement.~~ The coverage

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provided by the fund to the corporation shall constitute and operate as a full transfer of coverage from the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association to the corporation.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The proceeding does not relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges or other surcharges ~~under sub-subparagraph (b)3.j.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used

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in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or

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other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as

otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance, all

records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from

underwriting files and confidential claims files available to an entity that has obtained a permit to become an authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, a modeling company, a licensed surplus lines agent, or a licensed general lines insurance agent: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving person must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan or a rating plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. A licensed surplus lines agent or licensed general lines insurance agent may not use such information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by

the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

(z) In enacting the provisions of this section, the Legislature recognizes that both the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association have entered into financing arrangements that obligate each entity to service its debts and maintain the capacity to repay funds secured under these financing arrangements. It is the intent of the

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Legislature that nothing in this section be construed to compromise, diminish, or interfere with the rights of creditors under such financing arrangements. It is further the intent of the Legislature to preserve the obligations of the Florida Windstorm Underwriting Association and Residential Property and Casualty Joint Underwriting Association with regard to outstanding financing arrangements, with such obligations passing entirely and unchanged to the corporation and, specifically, to the Citizens ~~applicable~~ account ~~of the corporation~~. So long as any bonds, notes, indebtedness, or other financing obligations of the Florida Windstorm Underwriting Association or the Residential Property and Casualty Joint Underwriting Association are outstanding, under the terms of the financing documents pertaining to them, the governing board of the corporation shall have and shall exercise the authority to levy, charge, collect, and receive all premiums, assessments, surcharges, charges, revenues, and receipts that the associations had authority to levy, charge, collect, or receive under the provisions of subsection (2) and this subsection, respectively, as they existed on January 1, 2002, to provide moneys, without exercise of the authority provided by this subsection, in at least the amounts, and by the times, as would be provided under those former provisions of subsection (2) or this subsection, respectively, so that the value, amount, and collectability of any assets, revenues, or revenue source pledged or committed to, or any lien thereon securing such outstanding bonds, notes, indebtedness, or other financing obligations will not be diminished, impaired, or adversely affected by the amendments made by this act and to permit

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compliance with all provisions of financing documents pertaining to such bonds, notes, indebtedness, or other financing obligations, or the security or credit enhancement for them, and any reference in this subsection to bonds, notes, indebtedness, financing obligations, or similar obligations, of the corporation shall include like instruments or contracts of the Florida Windstorm Underwriting Association and the Residential Property and Casualty Joint Underwriting Association to the extent not inconsistent with the provisions of the financing documents pertaining to them.

(ii) The corporation shall revise the programs adopted pursuant to sub-subparagraph (q)3.a. for personal lines residential policies to maximize policyholder options and encourage increased participation by insurers and agents. After January 1, 2017, a policy may not be taken out of the corporation unless the provisions of this paragraph are met.

1. The corporation must publish a periodic schedule of cycles during which an insurer may identify, and notify the corporation of, policies that the insurer is requesting to take out. A request must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

2. The corporation must maintain and make available to the agent of record a consolidated list of all insurers requesting to take out a policy. The list must include a description of the coverage offered and the estimated premium for each take-out request.

3. If a policyholder receives a take-out offer from an authorized insurer, the risk is no longer eligible for coverage

with the corporation unless the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from the corporation pursuant to sub-subparagraph (c)5.c. This subparagraph applies to take-out offers that are part of an application to participate in depopulation submitted to the office on or after January 1, 2023. This subparagraph only applies to a policy that covers a primary residence.

4. The corporation must provide written notice to the policyholder and the agent of record regarding all insurers requesting to take out the policy. The notice must be in a format prescribed by the corporation and include, for each take-out offer:

a. The amount of the estimated premium;

b. A description of the coverage; and

c. A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

(nn) The corporation may share its claims data with the National Insurance Crime Bureau, provided that the National Insurance Crime Bureau agrees to maintain the confidentiality of such documents as otherwise provided for in paragraph (x).

(7) TRADEMARKS, COPYRIGHTS, OR PATENTS.—Notwithstanding any other law, the corporation is authorized, in its own name, to:

(a) Perform all things necessary to secure letters of patent, copyrights, or trademarks on any work products and enforce its rights therein.

(b) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture

or use thereof, on a royalty basis or for such other consideration as the corporation deems proper.

(c) Take any action necessary, including legal action, to protect trademarks, copyrights, or patents against improper or unlawful use or infringement.

(d) Enforce the collection of any sums due the corporation for the manufacture or use thereof by any other party.

(e) Sell any of its trademarks, copyrights, or patents and execute all instruments necessary to consummate any such sale.

(f) Do all other acts necessary and proper for the execution of powers and duties herein conferred upon the corporation in order to administer this subsection.

Section 2. Paragraphs (a), (b), and (c) of subsection (3) and paragraphs (d), (e), and (f) of subsection (6) of section 627.3511, Florida Statutes, are amended to read:

627.3511 Depopulation of Citizens Property Insurance Corporation.—

(3) EXEMPTION FROM DEFICIT ASSESSMENTS.—

(a) The calculation of an insurer's ~~assessment~~ liability ~~under s. 627.351(6)(b)3.a.~~ shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.

If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation shall pay to the assuming insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the corporation and assuming insurer. The term "policy acquisition costs" is defined as costs of issuance of the policy by the corporation which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation are located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation are located in such counties and an additional 50 percent of the risks removed from the corporation are located in other coastal counties.

(b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from liability ~~regular deficit assessments imposed pursuant to s. 627.351(6)(b)3.a.~~, but not emergency assessments

collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, of the Citizens Property Insurance Corporation until the earlier of the following:

1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or

2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.

(c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from liability ~~deficit assessments imposed pursuant to s. 627.351(6)(b)3.a.~~, but not from emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, of the Citizens Property Insurance Corporation attributable to such increase in exposure.

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

(d) The calculation of an insurer's ~~regular assessment~~ liability ~~under s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, shall, with respect to commercial residential policies removed from the corporation under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:

1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.

2. In the second year following removal of the policies,

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the policies are excluded from the calculation to the extent of 75 percent.

3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.

(e) An insurer that first wrote commercial residential property coverage in this state on or after June 1, 1996, is exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~, but not from emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, with respect to commercial residential policies until the earlier of:

1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or

2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.

(f) An insurer that is not otherwise exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~ with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from liability ~~regular assessments under s. 627.351(6)(b)3.a.~~, but not emergency assessments collected from policyholders pursuant to s. 627.351(6)(b)3.c. ~~s. 627.351(6)(b)3.c.~~, attributable to such increased exposure.

Section 3. Subsections (5), (6), and (7) of section 627.3518, Florida Statutes, are amended to read:

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627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(5) Notwithstanding s. 627.3517, any applicant for new coverage from the corporation on a primary residence is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program at a premium that is at or below the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a. An applicant for new coverage from the corporation on a risk that is not a primary residence is not eligible for coverage from the corporation if provided an offer of coverage from an authorized insurer through the program if such offer would render the risk ineligible pursuant to s. 627.351(6)(c)5.d. Whenever an offer of coverage for a personal lines risk that is a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer through the program which is at or below the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the risk is not eligible for coverage with the corporation. Whenever an offer of coverage for a personal lines risk that is not a primary residence is received for a policyholder of the corporation at renewal from an authorized insurer through the program, the risk is not eligible for coverage with the corporation if such offer would render the risk ineligible pursuant to s. 627.351(6)(c)5.d. In the event an offer of coverage on a primary residence for a new applicant is received from an authorized insurer through the program, and the

premium offered exceeds the eligibility threshold for applicants for new coverage established in s. 627.351(6)(c)5.a., the applicant or insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. In the event an offer of coverage for a personal lines risk that is a primary residence is received from an authorized insurer at renewal through the program, and the premium offered exceeds the eligibility threshold for policyholders of the corporation established in s. 627.351(6)(c)5.a., the insured may elect to accept such coverage, or may elect to accept or continue coverage with the corporation. Section 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from an authorized insurer obtained through the program. As used in this subsection, the term "primary residence" has the same meaning as in s. 627.351(6)(c)2.a.

(6) Independent insurance agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Are granted and must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.d.(I)(B) and (II)(B). Such ownership is granted for as long as the insured remains with the agency or until sold or surrendered in writing by the agent. Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such

expirations, records, or other written or electronic information may be used to review an application, issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) May accept an appointment from any insurer participating in the program.

(d) May enter into either a standard or limited agency agreement with the insurer, at the insurer's option.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their independent agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer participating in the program.

(7) Exclusive agents submitting new applications for coverage or that are the agent of record on a renewal policy submitted to the program:

(a) Must maintain ownership and the exclusive use of expirations, records, or other written or electronic information directly related to such applications or renewals written through the corporation or through an insurer participating in the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and (II)(B) or s. 627.351(6)(c)5.d.(I)(B) and (II)(B). Contracts with the corporation or required by the corporation must not amend, modify, interfere with, or limit such rights of ownership. Such expirations, records, or other written or electronic information may be used to review an application,

issue a policy, or for any other purpose necessary for placing such business through the program.

(b) May not be required to be appointed by any insurer participating in the program for policies written solely through the program, notwithstanding the provisions of s. 626.112.

(c) Must only facilitate the placement of an offer of coverage from an insurer whose limited servicing agreement is approved by that exclusive agent's exclusive insurer.

(d) May enter into a limited servicing agreement with the insurer making an offer of coverage, and only after the exclusive agent's insurer has approved the limited servicing agreement terms. The exclusive agent's insurer must approve a limited service agreement for the program for any insurer for which it has approved a service agreement for other purposes.

Applicants ineligible for coverage in accordance with subsection (5) remain ineligible if their exclusive agent is unwilling or unable to enter into a standard or limited agency agreement with an insurer making an offer of coverage to that applicant.

Section 4. This act shall take effect July 1, 2024.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

02/27/24
Meeting Date

FISCAL POLICY
Committee

SB 1716
Bill Number or Topic

Amendment Barcode (if applicable)

Name CHASE MITCHELL

Phone 850 413-4938

Address 400 S MONROE ST
Street

Email CHASE.MITCHELL@MYFLORIDACFO.COM

TALLAHASSEE FL 32399
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
CFO JIMMY PATRONIS

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/27/24
Meeting Date

Fiscal Policy
Committee

1716
Bill Number or Topic

Amendment Barcode (if applicable)

Name Christine Ashburn

Phone 850-513-3746

Address 2101 Maryland Circle
Street

Email christine.ashburn@citizensfla.com

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/27/24
Meeting Date

Fiscal Policy
Committee

1716
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chad Kunde

Phone (850) 786-7196

Address 136 S Bronough St
Street

Email ckunde@flchamber.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Chamber of Commerce

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-27-24
Meeting Date

FP
Committee

1718
Bill Number or Topic

302782
Amendment Barcode (if applicable)

Name Robert Reyes

Phone 850 509 1807

Address 817 Ingleside Ave
Street

Email rreyes@capitolgr

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Monroe County

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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02/27/23
Meeting Date

Committee

443848, 1716
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nation Brown

Phone 305-970-3244

Address 12300 NW 17th Ave
Street

Email Ctrqueen@gmail.com

Miami FL 33167
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/SB 1784
INTRODUCER:	Fiscal Policy Committee and Senator Grall
SUBJECT:	Mental Health and Substance Abuse
DATE:	February 29, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hall	Tuszynski	CF	**Favorable**
2.	Hall	Yeatman	FP	**Fav/CS**

I. Summary:

In Florida, the Baker Act provides a legal procedure for voluntary and involuntary mental health examination and treatment. The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. The Department of Children and Families (DCF) is the single state authority for substance abuse and mental health treatment services in Florida. The bill modifies the Baker Act and makes significant changes to the Marchman Act.

The bill amends the Baker Act by combining processes for courts to order individuals to involuntary outpatient services and involuntary inpatient placement in the Baker Act, to streamline the process for obtaining involuntary services, and providing more flexibility for courts to meet individuals' treatment needs. The bill also grants law enforcement officers discretion on initiating involuntary examinations.

The bill substantially amends the Marchman Act to:

- Repeal existing provisions for court-ordered involuntary assessments and stabilization in the Marchman Act, and creates a new consolidated involuntary treatment process.
- Prohibit courts from ordering an individual with a developmental disability who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement.
- Revise the voluntariness provision under the Baker Act to allow a minor's voluntary admission after a clinical review, rather than a hearing, has been conducted.
- Authorize a witness to appear remotely upon a showing of good cause and with consent by all parties.
- Allow an individual to be admitted as a civil patient in a state mental health treatment facility without a transfer evaluation and prohibits a court, in a hearing for placement in a treatment facility, from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

For both the Baker and Marchman Acts, the bill:

- Creates a more comprehensive and personalized discharge planning process.
- Requires the DCF to publish certain specified reports on its website.
- Removes limitations on advance practice registered nurses and physician assistants serving the physical health needs of individuals receiving psychiatric care.
- Allows a psychiatric nurse to release a patient from a receiving facility if certain criteria are met.
- Removes the 30-bed cap for crisis stabilization units.

The bill will have an indeterminate negative fiscal impact on state government.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities can cope with normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

- Emotional well-being: perceived life satisfaction, happiness, cheerfulness, peacefulness;
- Psychological well-being: self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- Social well-being: social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. More than one in five adults lives with a mental illness.[4] Young adults aged 18-25 had the highest prevalence of any mental illness[5] (33.7%) compared to adults aged 26-49 (28.1%) and aged 50 and older (15.0%).[6]

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[1] World Health Organization, Mental Health: Strengthening Our Response, available at: https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited Jan. 26, 2024).
[2] Centers for Disease Control and Prevention, Mental Health Basics, available at: http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited Jan. 26, 2024).
[3] *Id.*
[4] National Institute of Mental Health (NIH), Mental Illness, available at: https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Jan. 26, 2024).
[5] Any mental illness (AMI) is defined as a mental, behavioral, or emotional disorder. AMI can vary in impact, ranging from no impairment to mild, moderate, and even severe impairment (e.g., individuals with serious mental illness).
[6] National Institute of Mental Health (NIH), Mental Illness, available at: https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Jan. 26, 2024).

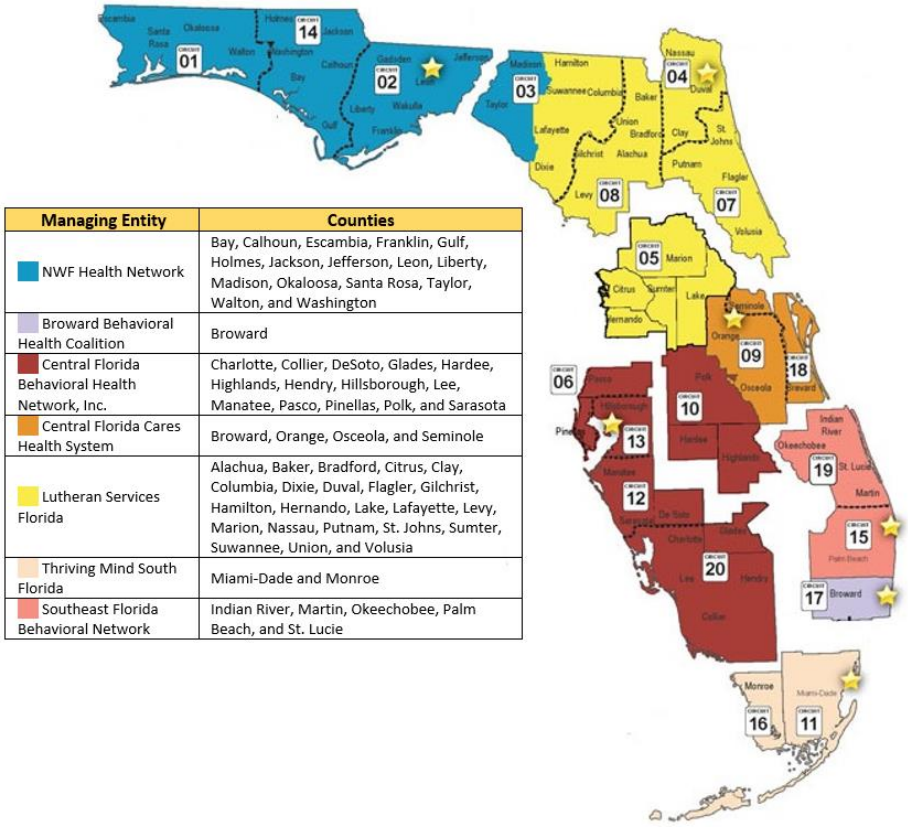
Mental Health Safety Net Services

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAM programs include a range of prevention, acute interventions (e.g., crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Behavioral Health Managing Entities

In 2001, the Legislature authorized the DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[7] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized the DCF to implement MEs statewide.[8] MEs were fully implemented statewide in 2013, serving all geographic regions.

The DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the state. The regions are divided as follows:[9]



Managing Entity	Counties
NWF Health Network	Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Walton, and Washington
Broward Behavioral Health Coalition	Broward
Central Florida Behavioral Health Network, Inc.	Charlotte, Collier, DeSoto, Glades, Hardee, Highlands, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota
Central Florida Cares Health System	Broward, Orange, Osceola, and Seminole
Lutheran Services Florida	Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lake, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, and Volusia
Thriving Mind South Florida	Miami-Dade and Monroe
Southeast Florida Behavioral Network	Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie

[7] Ch. 2001-191, Laws of Fla.
[8] Ch. 2008-243, Laws of Fla.
[9] DCF, Managing Entities, available at: https://www.myflfamilies.com/services/samh/providers/managing-entities (last visited Jan. 26, 2024).

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[10] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[11] A community or region provides a coordinated system of care for those with a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, the DCF may award system improvements grants to managing entities.[12] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in the DCF's assessment of behavioral health services in this state.[13] The DCF must use performance-based contracts to award grants.[14]

There are several essential elements which make up a coordinated system of care, including:[15]

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:[16]

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;

[10] Section 394.9082(5)(d), F.S.
[11] Section 394.4573(1)(c), F.S.
[12] Section 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[13] *Id.*
[14] *Id.*
[15] Section 394.4573(2), F.S.
[16] Section 394.495(4), F.S.

- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

The DCF must define the priority populations which would benefit from receiving care coordination.[17] In defining priority populations, the DCF must consider the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.[18] The assessments must be submitted to the DCF for inclusion in the state and district substance abuse and mental health plan.[19]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker At, was enacted in 1971 to revise the state's mental health commitment laws.[20] The Act includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It, additionally, protects the rights of all individuals examined or treated for mental illness in Florida.[21]

The Department of Children and Families (DCF) is responsible for the operation and administration of the Baker Act, including publishing an annual Baker Act report. According to the Fiscal Year (FY) 2021-2022 Baker Act Annual Report, over 170,000 individuals were involuntarily examined under the Baker Act; of those, just over 11,600 individuals were 65 years of age or older. This age group is the most likely to include individuals with Alzheimer's disease or related dementia. It is important to note the number of Baker Acts per year decreased during FY 2018-2019, FY 2019-2020, FY 2020-2021, across all age groups.[22]

Rights of Patients

The Baker Act protects the rights of patients examined or treated for mental illness in Florida, including, but not limited to, the right to give express and informed consent for admission or treatment and the right to communicate freely and privately with persons outside a facility, unless the facility determines that such communication is likely to be harmful to the patient or others.[23]

[17] Section 394.9082(3)(c), F.S.
[18] Section 394.9082(5)(b), F.S.
[19] Section 394.75(3), F.S.
[20] The Baker Act is contained in Part I of Ch. 394, F.S.
[21] Section 394.459, F.S.
[22] DCF, *Agency Bill Analysis* (2023), on file with the Senate Children, Families, and Elder Affairs Committee.
[23] Sections 394.459(3), F.S. and 394.459(5), F.S. Other patients' rights include the right to dignity; treatment regardless of ability to pay; express and informed consent for admission or treatment; quality treatment; possession of his or her clothing

Each patient entering treatment must be asked to give express and informed consent for admission or treatment.[24] If the patient has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent must be obtained from the patient's guardian or guardian advocate. If the patient is a minor, consent must be requested from the patient's guardian unless the minor is seeking outpatient crisis intervention services.[25] In situations where emergency medical treatment is needed and the patient or the patient's guardian or guardian advocate are unable to provide consent, the administrator of the facility may, upon the recommendation of the patient's attending physician, authorize treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient.[26]

Currently, a facility must provide immediate patient access to a patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient or the patient exercises their right not to communicate or visit with the person.[27] If a facility restricts a patient's right to communicate or restrict visitors, the facility must provide written notice of the restriction and the reasons for it to the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative.[28] A qualified professional[29] must document the restriction within 24 hours, and a record of the restrictions and the reasons for the restrictions must be recorded in the patient's clinical record. Under current law, a facility must review patient communication restrictions at least every three days.[30]

Clinical Records

Clinical records maintained by mental health facilities, which can include medical records, progress notes, charts and admission and discharge data, and all other information recorded by facility staff pertaining to the patient's hospitalization or treatment,[31] are confidential and exempt from public disclosure by law.[32] A patient's clinical records and other information may be released if authorized by the patient or the patient's guardian. The patient's guardian or guardian advocate must be provided access to the appropriate information and clinical records of the patient and may authorize the release of such information and records to the appropriate persons to ensure the continuity of the patient's health care or mental health care.[33] Current law does not

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and personal effects; vote in elections, if possible; petition the court for a writ of habeas corpus to question the cause and legality of their detention in a receiving or treatment facility; and participate in their treatment and discharge planning. See, s. 394.456(1)-(11), F.S. Current law imposes liability for damages on those who violate or abuse patient rights or privileges. *See* s. 394.459(10), F.S.

[24] Section 394.459(3), F.S.

[25] Section 394.4784, F.S.

[26] Section 394.459(3)(d), F.S.

[27] Section 394.459(5)(c), F.S.

[28] Section 394.495(5)(d), F.S.

[29] A qualified professional is a physician or a physician assistant, a psychiatrist, a psychologist, or a psychiatric nurse. See s. 394.455(39), F.S.

[30] Section 394.459, F.S.

[31] Section 394.455(6), F.S.

[32] Section 394.4615, F.S.

[33] *Id.*

grant a patient's legal custodian access to the patient's information and clinical records or permit the legal custodian to authorize the release of a patient's clinical records and information.

Receiving Facilities and Involuntary Examination

Individuals in an acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[34] Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by the DCF as a receiving facility.

Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by the DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[35] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[36] Funds appropriated for Baker Act services may only be used to pay for services diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[37] Currently, there are 126 DCF designated receiving facilities.[38]

Crisis Stabilization Units

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services. CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.[39] Individuals often enter the public mental health system through CSUs. Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

Although involuntary examinations under the Baker Act have recently been decreasing statewide, the population of Florida continues to grow, and there are counties where the number of involuntary examinations remain the same or are slightly increasing, while some receiving facilities within communities are closing. There has been some demonstrated success with mobile response teams diverting individuals from the receiving facilities, resulting in those persons who are admitted to a receiving facility for an involuntary examination having higher acuity and longer lengths of stay.

[34] Sections 394.4625 and 394.463, F.S.
[35] Section 394.455(40), F.S. This term does not include a county jail.
[36] Section 394.455(38), F.S.
[37] R. 65E-5.400(2), F.A.C.
[38] DCF, *Agency Bill Analysis* (2023), on file with the Senate Children Families, and Elder Affairs Committee.
[39] Section 394.875, F.S.

In 2011, statute directed the DCF to implement a demonstration project in circuit 18 to assess the impact of expanding the number of authorized CSU beds from 30 to 50. The facility in circuit 18 reported that by adding 20 additional beds, they were able to alleviate capacity issues within the county through 2021. The facility also reported that there are days that they exceed 100% capacity. Additionally, the facility reported that the bed capacity expansion has allowed them to serve clients with complex needs (e.g., clients served by APD).[40]

Involuntary Examination

An involuntary examination is required if there is reason to believe that the person has a mental illness and, because of his or her mental illness, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's well-being, and such harm is unavoidable through the help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[41]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[42] or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.[43]

Unlike the discretion afforded courts and medical professionals, current law mandates that law enforcement officers must initiate an involuntary examination of a person who appears to meet the criteria by taking him or her into custody and delivering or having the person delivered to a receiving facility for examination.[44] When transporting, officers are currently required to restrain the person in the least restrictive manner available and appropriate under the circumstances.[45] The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made part of the patient's clinical record. The report must also include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles.

Involuntary patients must be taken to either a public or private facility that has been designated by the DCF as a Baker Act receiving facility. Under the Baker Act, a receiving facility has up to

[40] DCF, Agency Bill Analysis (2023), on file with the Senate Children, Families, and Elder Affairs Committee.
[41] Section 394.463(1), F.S.
[42] Section 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[43] Section 394.463(2)(a)3., F.S. The report and certificate must be made a part of the patient's clinical record.
[44] Section 394.463(2)(a)2., F.S.
[45] *Id.*

72 hours to examine an involuntary patient.[46] During those 72 hours, an involuntary patient must be examined by a physician, clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility to determine if the criteria for involuntary services are met.[47] Current law does not indicate when the examination period begins for an involuntary patient. However, if the patient is a minor, a receiving facility must initiate the examination within 12 hours of arrival.[48]

Within that 72-hour examination period, one of the following must happen:[49]

- The patient must be released, unless he or she is charged with a crime, in which case, law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to be placed and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.

If the patient's 72-hour examination period ends on a weekend or holiday, and the receiving facility:[50]

- Intends to file a petition for involuntary services, the patient may be held at a receiving facility through the next working day and the petition for involuntary services must be filed no later than such date. If the receiving facility fails to file a petition at the close of the next working day, the patient must be released from the receiving facility upon documented approval from a psychiatrist or clinical psychologist.
- Does not intend to file a petition for involuntary services, the receiving facility may postpone release of a patient until the next working day if a qualified professional documents that adequate discharge planning and procedures and approval from a psychiatrist or clinical psychologist are not possible until the next working day.

The receiving facility may not release an involuntary examination patient without the documented approval of a psychiatrist or a clinical psychologist. However, if the receiving facility is owned or operated by a hospital or health system, or a nationally accredited community mental health center, a psychiatric nurse performing under the framework of an established protocol with a psychiatrist is permitted to release a Baker Act patient in specified community settings. However, a psychiatric nurse is prohibited from approving a patient's release if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.[51]

[46] Section 394.463(2)(g), F.S.
[47] Section 394.463(2)(f), F.S.
[48] Section 394.463(2)(g), F.S.
[49] *Id.*
[50] Section 394.463(2)(g)4., F.S.
[51] Section 394.463(2)(f). F.S.

Involuntary Examination of Minors

During fiscal year (FY) 2021-2022, 170,048 involuntary examinations were conducted for 115,239 individuals under the Baker Act[52]; of those examined, just over 36,000 were minors.[53] Individuals with multiple involuntary examinations accounted for a disproportionate number of examinations. Of the total involuntary examinations, there were 21.78 percent of individuals with two or more exams in FY 2021-2022. These individuals accounted for 46.99 percent of involuntary exams during the three-year period for FY 2019-2020 through FY 2021-2022.[54]

Approximately one in five (21.23 percent) of children with an involuntary examination in FY 2021-2022 had two or more involuntary exams. These children accounted for 44.93 percent of the involuntary examinations of the year.[55] According to the annual Baker Act Report, 12.40 percent of the Baker Act examinations for children were initiated while at school.[56]

Transportation to a Receiving Facility

Each county is required to develop and implement a transportation plan in collaboration with the managing entities to transport individuals to designated receiving facilities for involuntary examination.[57] A county may enter into an agreement with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into an agreement for this purpose, the counties must notify the managing entity and provide the managing entity with a copy of the agreement.[58]

The transportation plan must describe the method of transportation to a designated receiving facility and may identify responsibility for the transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate.[59]

Each county is required to designate a single law enforcement agency within the county, or portions thereof, to take a person in need of services to a receiving facility for involuntary examination.[60] The designated law enforcement agency may decline to transport the person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities at the sole cost of the county; and

[52] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report*, available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf (last visited February 27, 2024).
[53] DCF, *Report on Involuntary Examination of Minors*, available at https://www.usf.edu/cbcs/baker-act/documents/ba_minors_report_nov2023.pdf (last visited February 27, 2024).
[54] *Id.*
[55] *Id.*
[56] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022*, available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf (last visited February 27, 2024).
[57] Section 394.462, F.S.
[58] *Id.*
[59] *Id.*
[60] Section 394.462(1)(a), F.S.

- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.[61]

Baker Act Reporting Requirements

Section 394.461(4), F.S., directs facilities designated as public receiving or treatment facilities to report certain data to the DCF on an annual basis. The DCF must issue an annual report based on the data received, including individual facility data and statewide totals. The report is submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 394.463(2)(e), F.S., requires the DCF to prepare and provide annual reports to the agency itself, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the senate and the House of Representatives. The annual reports analyze data obtained from ex parte orders, involuntary orders issued under the Baker Act, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients.[62] Current law does not provide a due date for the report.

Section 394.463(4), F.S., also requires the DCF to submit reports detailing findings on repeated involuntary Baker Act examinations of minors using data submitted by receiving facilities. The DCF must analyze the data on:

- Both the initiation of involuntary examinations of children and the initiation of involuntary examination of students who are removed from a school;
- Identify any patters or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student;
- Study root causes for such patterns, trends, or repeated involuntary examinations; and
- Make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations.

The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered year.

Involuntary Services

Involuntary services are defined as court-ordered outpatient services or inpatient placement for mental health treatment.[63]

<u>Involuntary Outpatient Services</u>

A person may be ordered to involuntary outpatient services upon a finding of the court that by clear and convincing evidence, all of the following factors are met:[64]

- The person is 18 years of age or older;
- The person has a mental illness;

[61] Section 394.462(1)(b), F.S.
[62] Section 394.463(2)(e), F.S.
[63] Section 394.455(23), F.S.
[64] Section 394.4655(2), F.S.

- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has, within the immediately preceding 36 months:
  - Been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility, at least twice; or
  - Engaged in one or more acts of serious violent behavior towards self or others, or attempts at serious bodily harm to himself or herself or others;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment or her or she is unable to determine for himself or herself whether placement is necessary;
- The person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;[65]
- It is likely that the person will benefit from involuntary outpatient services; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

A petition for involuntary outpatient services may be filed by the administrator of either a receiving facility or a treatment facility.[66] The petition must allege and sustain each of the criterion for involuntary outpatient services and be accompanied by a certificate recommending involuntary outpatient services by a qualified professional and a proposed treatment plan.[67]

The petition for involuntary outpatient services must be filed in the county where the patient is located. However, if the patient is being placed from a state treatment facility, the petition must be filed in the county where the patient will reside.[68] The petition must be based on the opinions of two professionals who have personally examined the individual within the preceding 72 hours.[69] When the petition has been filed, the clerk of the court must provide copies of the petition and the proposed treatment plan to the DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[70]

Once a petition for involuntary outpatient services has been filed with the court, the court must hold a hearing within five business days, unless a continuance is granted.[71] Under current law, the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[72] The court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in the patient's best interests and the patient's counsel does not

[65] This factor is evaluated based on the person's treatment history and current behavior.
[66] Section 394.4655(4)(a), F.S.
[67] Section 394.4655(4)(b), F.S.
[68] Section 394.4655(4)(c), F.S.
[69] Section 394.4655(3)(a)1., F.S.
[70] *Id.*
[71] Section 394.4655(7)(a)1., F.S.
[72] *Id.*

object.[73] Otherwise, the patient must be present. The state attorney for the circuit in which the patient is located represents the state, rather than the petitioner, as the real party in interest in the proceeding.[74] The court must appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel.[75]

At the hearing on involuntary outpatient services, the court must consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate.[76] If the court concludes that the patient meets the criteria for involuntary outpatient services, it must issue an order for those services.[77] The order must specify the duration of involuntary outpatient services, which may be up to 90 days, and the nature and extent of the patient's mental illness.[78] The order of the court and the treatment plan are to be made part of the patient's clinical record.[79]

If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services, but instead meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[80]

Involuntary Inpatient Placement

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:[81]

- He or she is mentally ill and because of his or her mental illness:
  - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement or is unable to determine for himself or herself whether placement is necessary; and
  - He or she is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services; and
  - Without treatment, is likely to suffer from neglect or refuse to care for himself or herself; and
  - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
  - There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be appropriate.

[73] *Id.*
[74] *Id.*
[75] Section 394.4655(5), F.S. This must be done within one court working day of filing the petition.
[76] Section 394.4655(7)(d), F.S.
[77] Section 394.4655(7)(b)1., F.S.
[78] *Id.*
[79] *Id.*
[80] Section 394.4655(7)(c), F.S. Additionally, if the person, instead, meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant to the statutory requirements of the Marchman Act.
[81] Section 394.467(1), F.S.

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[82] The petition must be based on the opinions of two professionals who have personally examined the individual within the past 72 hours.[83] Upon filing, the clerk of the court must provide copies to the DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[84] Unlike the procedures for involuntary outpatient services, current law does not require a proposed treatment plan to be filed with the petition for involuntary inpatient placement.

Involuntary Inpatient Placement Hearing

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[85] However, the laws governing involuntary inpatient placement are silent regarding the court's order becoming part of the patient's clinical record. Once a petition for involuntary inpatient placement has been field, the court must hold a hearing within five business days in the county or facility where the patient is located, unless a continuance is granted.[86] Presently, only the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[87] Similar to the procedures for involuntary outpatient services, the court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in their best interests, and the patient's counsel does not object.[88] Otherwise, the patient must be present.

Current law permits the court to appoint a magistrate to preside at the hearing, in general.[89] At the hearing, the state attorney must represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.[90] Although the state attorney has the evidentiary burden in Baker Act cases, current law does not require a facility to make the patient's clinical records available to the state attorney so that the state can evaluate and prepare its case before the hearing. Additionally, there is no requirement that the court allow testimony from family members regarding the patient's prior history and how it relates to their current condition.

If, at any time before the conclusion of the hearing, it appears to the court that the person does not meet the criteria for involuntary inpatient placement, but rather meets the criteria for involuntary outpatient services, the court may order the person evaluated for involuntary outpatient services.[91] If the court concludes that the patient meets the criteria for involuntary

[82] Section 394.467(2) and (3), F.S.
[83] Section 394.467(2), F.S.
[84] Section 394.467(3), F.S.
[85] *See* section 394.467(6) and (7), F.S.
[86] Section 394.467(6), F.S.
[87] Section 394.467(5), F.S.
[88] Section 394.467(6), F.S.
[89] *Id.*
[90] *Id.*
[91] Section 394.467(6)(c), F.S.

inpatient placement, it has discretion to issue an order for involuntary inpatient services at a receiving facility for up to 90 days or in a state treatment facility[92] for up to six months.[93]

Current law prohibits a state treatment facility from admitting a civil patient unless he or she has undergone a transfer evaluation, the process by which the patient is evaluated for appropriateness of placement in a treatment facility.[94] Current law also requires the court to receive and consider the transfer evaluation's documented information before the involuntary placement hearing is held, but it does not specify that the evaluator must testify at the hearing in order for the court to consider any substantive information within it.[95] Under Florida law, if a court were to consider substantive information in the transfer evaluation without the evaluator testifying at the hearing, it would be a violation of the hearsay rule contained in Florida's Evidence Code.[96]

Current law requires the court's order to specify the nature and extent of the patient's illness and prohibits the court from ordering individuals with traumatic brain injuries or dementia who lack a co-occurring mental illness to be involuntary committed to a state treatment facility.[97] However, there is currently no prohibition against involuntarily committing individuals with developmental disabilities who also lack a co-occurring mental illness to these facilities.

Remote Hearings

In response to the COVID-19 pandemic, on March 21, 2020, the Chief Justice of the Florida Supreme Court issued Supreme Court of Florida Administrative Order AOSC20-23, Amendment 2, authorizing courts to conduct hearings remotely. However, on January 8, 2022, Supreme Court of Florida Administrative Order AOSC21-17 was issued, requiring in-person hearings unless the facility where the individual is located is closed to hearing participants due to the facility's COVID-19 protocols or the individual waives the right to physical presence at the hearing.

Discharge Planning

Under current law, before a patient is released from a receiving or treatment facility, certain discharge planning procedures must be followed. Each facility must have discharge planning and procedures that include and document consideration of, at a minimum:

- Follow-up behavioral health appointments,
- Information on how to obtain prescribed medications, and
- Information pertaining to available living arrangements, transportation, and recovery support services.[98]

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[92] A treatment facility is any state-owned, state-operated, or state-supported hospital, center, or clinic designated by DCF to provide mentally ill patients treatment and hospitalization that extends beyond that provided for by a receiving facility. Treatment facilities also include federal government facilities and any private facility designated by DCF. Only VA patients may be treated in federal facilities S. 394.455(48), F.S. A receiving facility is any public or private facility or hospital designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. County jails are not considered receiving facilities. S. 394.455(40), F.S.

[93] Section 394.467(6)(b), F.S.

[94] Section 394.461(2), F.S.

[95] *Id.*

[96] Section 90.802, F.S. The basic hearsay rule states that courts cannot rely on out-of-court, unsworn statements (written or spoken) as proof of the matter asserted in the statement.

[97] Section 394.467(6), F.S.

[98] Section 394.468, F.S.

Additionally, for minors, information related to the Suicide and Crisis Lifeline must be provided.

Background Screening of Mental Health Care Personnel

Chapter 435, F.S., establishes standard procedures and requirements for criminal history background screening of prospective employees. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of Dru Sjodin National Sex Offender Public Website[99], and may include criminal records checks through local law enforcement agencies.[100] A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.[101]

Mental health personnel are required to complete a level 2 background screening. Mental health personnel include all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment.[102]

Section 456.0135, F.S., requires physicians, physician assistants, nurses, and other specified medical professionals to undergo a level 2 background screening as part of the licensure process.[103] The appropriate regulatory board reviews the background screening results to determine if the applicant or licensee has any offenses that would disqualify them from state licensure. A health care practitioner must also complete an additional level 2 background check as a condition of employment in mental health programs and facilities.

Substance Abuse

Approximately 48.7 million people in the U.S. aged 12 and older had a substance use disorder (SUD).[104] It is estimated that 1.1 million Floridians have a substance use disorder.[105] Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and

[99] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at https://www.nsopw.gov/ (last visited Jan. 26, 2024).
[100] Section 435.04, F.S.
[101] Section 435.04, F.S.
[102] Section 394.4572(1)(a), F.S.
[103] Section 456.0135, F.S.
[104] SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, available at https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf (last visited Jan. 26, 2024).
[105] Substance Abuse and Mental Health Administration, *Behavioral Health Barometer, Florida, Volume 6*, (2020), available at: https://www.samhsa.gov/data/sites/default/files/reports/rpt32826/Florida-BH-Barometer_Volume6.pdf (last visited Jan. 26, 2024).

illicit drugs.[106] Abuse can result when a person uses a substance[107] in a way that is not intended or recommended, or because they are using more than prescribed. Drug abuse can cause individuals to experience one or more symptoms of another mental illness or even trigger new symptoms.[108] Additionally, individuals with mental illness may abuse drugs as a form of self-medication. Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[109]

A substance use disorder is determined by specified criteria included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). According to the DSM-5, a SUD diagnosis is based on evidence of impaired control, social impairment, risky use, and pharmacological indicators (tolerance and withdrawal). Substance use disorders occur when the chronic use of alcohol or drugs cause significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[110] Symptoms can range from moderate to severe, with addiction being the most severe form of SUDs.[111] Brain imaging studies of persons with addiction show physical changes in areas of the brain that are critical to judgment, decision-making, learning and memory, and behavior control.[112] The most common substance use disorders in the U.S. are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[113]

According to the National Institute on Mental Health, a SUD is a mental disorder that affects a person's brain and behavior, leading to a person's inability to control their use of substances such as legal or illegal drugs, alcohol, or medications.[114] SUDs may co-occur with other mental disorders.[115] Approximately 19.4 million adults in the U.S. have co-occurring disorders.[116] Examples of co-occurring disorders include the combinations of major depression with cocaine

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[106] World Health Organization, *Substance Abuse*, available at: https://www.afro.who.int/health-topics/substance-abuse (last visited Jan. 26, 2024).
[107] Substances can include alcohol and other drugs (illegal or not), as well as substances that are not drugs at all, such as coffee and cigarettes.
[108] Robinson, L, Smith, M, and Segal, J, (October 2023). *Dual Diagnosis: Substance Abuse and Mental Health*, HealthGuide.org, available at https://www.helpguide.org/articles/addictions/substance-abuse-and-mental-health.htm#:~:text=Substance%20abuse%20may%20sharply%20increase,symptoms%20and%20delaying%20your%20recovery (last visited Jan. 26, 2024).
[109] National Institute on Drug Abuse, *Drugs, Brains, and Behavior: the Science of Addition*, available at: https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction (last visited Jan. 26, 2024).
[110] Substance Abuse and Mental Health Services Administration, *Mental Health and Substance Use Disorders*, available at: https://www.samhsa.gov/find-help/disorders (last visited Jan. 26, 2024).
[111] National Institute of Mental Health, *Substance Use and Co-Occurring Mental Disorders*, available at: https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited Jan. 26, 2024).
[112] National Institute on Drug Abuse, Drugs, Brains, and Behavior: The Science of Addiction, available at: https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction (last visited Jan. 26, 2024).
[113] The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited Jan. 26, 2024).
[114] National Institute of Mental Health, *Substance Use and Co-Occurring Mental Disorders*, available at: https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health (last visited Jan. 26, 2024).
[115] *Id.*
[116] Substance Abuse and Mental Health Services Administration, Key Substance Use and Mental Health Indicators in the U.S.: Results from the 2021 National Survey on Drug Use and Health, (December 2022), available at: https://www.samhsa.gov/data/sites/default/files/reports/rpt39443/2021NSDUHFFRRev010323.pdf (last visited Jan. 26, 2024).

addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug use.[117]

The Marchman Act

In the early 1970s, the federal government furnished grants for states "to develop continuums of care for individuals and families affected by substance abuse."[118] The grants provided separate funding streams and requirements for alcoholism and drug abuse.[119] In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[120] In 1993, legislation combined chapters 396 and 397, F.S., into a single law, entitled the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[121] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

An individual may receive services under the Marchman Act through either voluntary[122] or involuntary admission.[123] The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[124] However, denial of addiction is a prevalent symptom of a SUD, creating a barrier to timely intervention and effective treatment.[125] As a result, a third party must typically provide a person the intervention needed to receive SUD treatment.[126]

Rights of Individuals

The Marchman Act protects the rights of individuals receiving substance abuse services in Florida, including, but not limited to the right to receive quality treatment at a state-funded facility, regardless of ability to pay and the right to counsel.[127] Under the Marchman Act, an individual must be informed that he or she has the right to be represented by counsel in any involuntary proceeding for assessment, stabilization, or treatment and that he or she may apply immediately to the court to have an attorney appointed if he or she cannot afford one. If the

[117] *Id.*
[118] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, available at https://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited Jan. 26, 2024).
[119] *Id.*
[120] *Id.*
[121] Ch. 93-39, Laws of Fla., codified in Chapter 397, F.S. Reverend Hal S. Marchman was an advocate for persons who suffer from alcoholism and drug abuse.
[122] Section 397.601, F.S.
[123] Sections 397.675 – 397.6978, F.S.
[124] See section 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[125] SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health*, available at https://www.samhsa.gov/data/sites/default/files/reports/rpt42731/2022-nsduh-nnr.pdf (last visited on Jan. 26, 2024).
[126] *Id.*
[127] Section 397.501, F.S.

individual is a minor, the minor's parent, legal guardian, or legal custodian may apply to the court to have an attorney appointed.[128]

Involuntary Admissions

There are five voluntary admission procedures that can be broken down into two categories: non-court involved admissions and court involved admissions. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act where there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment:[129]

- Has lost the power of self-control with respect to substance abuse; and
- The person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services; or
- Without care or treatment, is likely to suffer from neglect or refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through help of willing family members or friends; or
- The person has either inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another.

Under the Marchman Act, the be "impaired" or "substance abuse impaired," a person must have a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance, in a way that induces mental, emotional ,or physical problems and causes socially dysfunctional behavior.[130] Examples of psychoactive or mood-altering substances including alcohol and illicit or prescription drugs; however, only alcohol is explicitly named under current law. Although having a substance use disorder often leads to being impaired or substance abuse impaired, it is not presently included in the "impaired" or "substance abuse impaired" definition.

Unlawful activities relating to assessment and treatment

It is unlawful to give false information for the purpose of obtaining emergency or other involuntary admission for assessment and treatment. It is also unlawful to cause, conspire, or assist with conspiring: to have a person involuntarily admitted without a reason to believe the person is actually impaired, or to deny the person the right to treatment.[131]

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- Protective custody: this procedure is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.[132]

[128] *Id.*
[129] Section 397.675, F.S.
[130] Section 397.311, F.S.
[131] Section 397.581, F.S. Committing an unlawful activity relating to assessment and treatment is a misdemeanor of the first degree, punishable by law and by a fine not exceeding $5,000.
[132] Sections 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to his or her residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.

- Emergency Admission: this procedure permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[133]
- Alternative Involuntary Assessment for Minors: this procedure provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[134]

Court Involved Involuntary Admissions

Under Current law, courts have jurisdiction over involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services to assess and stabilize an individual, and involuntary services[135], which provides for long-term court-ordered substance abuse treatment. Both types of involuntary admissions involve filing a petition with the clerk of court in the county where the person is located, which may be different from where he or she resides. Current law permits the chief judge in Marchman Act cases to appoint a general or special magistrate to preside over all or part of the proceedings. Although this may include ancillary matters, such as writs of habeas corpus issued under the Marchman Act, this is not explicitly stated in current law.

Involuntary Assessment and Stabilization

A petition for involuntary assessment and stabilization must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary assessment and stabilization.[136] Once the petition is filed, the court issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[137] The court may appoint a magistrate to preside over all or part of the proceedings.[138]

After hearing all relevant testimony, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.[139]

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[133] Section 397.679, F.S.
[134] Section 397.6798, F.S.
[135] The term "involuntary services" means "an array of behavioral health services that may be ordered by the court for a person with substance abuse impaired or co-occurring substance abuse impairment and mental health disorders." Section 397.311(23), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment." For consistency, this analysis will use the term involuntary services.
[136] Section 397.6951, F.S.
[137] Section 397.6815, F.S. Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.
[138] Section 397.681, F.S.
[139] Section 397.6818, F.S.

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of five days[140] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[141] During that time, an assessment is completed on the individual.[142] The written assessment is sent to the court. Once the written assessment is received, the court must either:[143]

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if a petition for involuntary services has been initiated.

Involuntary services

Involuntary services, synonymous with involuntary treatment, allows the court to require an individual to be admitted for treatment for a longer period if the individual meets the eligibility criteria for involuntary admission and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period, including having been assessed by a qualified professional within five days.[144] Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary services.[145] Under current law, the petition must also contain the findings and recommendations of the qualified professional that performed the assessment.

An individual's spouse, legal guardian, any relative, or service provider, or any adult who has direct personal knowledge of the individual's substance abuse impairment or prior course of assessment and treatment may file a petition for involuntary services on behalf of the individual. If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition. [146] Current law does not permit the court or clerk of court to waive or prohibit process service fees for indigent petitioners.

[140] If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within five days after the court's order, it may, within the original time period, file a request for an extension of time to complete its assessment. The court may grant additional time, not to exceed seven days after the date of the renewal order, for the completion of the involuntary assessment and stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed, constitutes legal authority to involuntarily hold the individual for a period not to exceed ten days in the absence of a court order to the contrary. S. 397.6821, F.S.

[141] Section 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition.

[142] Section 397.6819, F.S. The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.

[143] Section 397.6822, F.S. The timely filing of a Petition for Involuntary Services authorizes the service provider to retain physical custody of the individual pending further order of the court.

[144] Section 397.693, F.S.

[145] Section 397.6951, F.S.

[146] Section 397.695(5), F.S.

A hearing on a petition for involuntary services must be held within five days unless a continuance is granted.[147] A copy of the petition and notice of hearing must be provided to all parties and anyone else the court determines. Current law specifies that the court, not the clerk, must issue a summons to the person whose admission is sought.[148] However, typically the clerk of course, not the court, issues summons. Current law does not specify who must effectuate service (i.e., a law enforcement agency or private process servers). Current law requires the respondent to be present, unless the court finds appearance to be harmful, in which case the court must appoint a guardian advocate to appear on the respondent's behalf.[149]

In a hearing for involuntary services, the petitioner must prove by clear and convincing evidence that:[150]

- The individual is substance abuse impaired and has a history of a lack of compliance with treatment for substance abuse; and
- Because of such impairment the person is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:
    - Without services the individual is likely to suffer from neglect or refuse to care for himself or herself and such neglect or refusal proses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the individual will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or
    - The individual's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

At the hearing, the court must hear and review all relevant evidence, including the results of the involuntary assessment by a qualified professional, and either dismiss the petition or order the individual to receive involuntary services from his or her chosen licensed service provider, if possible and appropriate.[151]

If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive services from a publicly funded licensed service provider for up to 90 days.[152] If an individual continues to need involuntary services, at least ten days before the 90-day period expires, the service provider can petition the court to extent the services an additional 90 days.[153] A hearing must, then, be held within fifteen days.[154] Unless an extension is requested, the individual is automatically released after 90 days.[155] Current law does not require facilities to offer discharge planning to assist the respondent with post-discharge care.

[147] Section 397.6955, F.S.
[148] Section 397.6955(3), F.S.
[149] Section 397.6957(1), F.S.
[150] Section 397.6957(2), F.S.
[151] Section 397.6957(4), F.S.
[152] Section 397.697(1), F.S.
[153] Section 397.6975, F.S.
[154] *Id.*
[155] Section 397.6977, F.S.

However, substance abuse treatment facilities other than addictions receiving facilities are not locked; therefore, individuals receiving treatment in such unlocked facilities under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[156] Current law does not permit courts to drug test respondents in Marchman Act cases.

Substance Abuse Treatment in Florida

The DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse, or dependence:[157]

- Detoxification Services: detoxification focuses on the elimination of substance use. Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.
- Treatment Services: treatment services[158] include a wide array of assessment, counseling, case management, and support services that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.
- Recovery Support: recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.

Licensed Bed Capacity for Substance Abuse Service Providers

The DCF regulates substance abuse treatment providers, establishing licensure requirements and licensing service providers and individual service components under ch. 397, F.S. and rule 65D-30, F.A.C. Currently, there are over 2,800 DCF licensed substance abuse providers.[159] Licensed service components include a continuum of substance abuse prevention[160], intervention[161], and clinical treatment services, including, but not limited to:[162]

- Addictions receiving facilities;
- Detoxification;

[156] If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at the hearing, a show cause hearing may be set. If the respondent does not appear at the show cause hearing, the court may find the respondent in contempt of court.
[157] Department of Children and Families, *Treatment for Substance Abuse*, available at: https://www.myflfamilies.com/services/samh/treatment (last visited Jan. 26, 2024).
[158] Id. Research that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child protective system, employment, increased earnings, and better health.
[159] DCF, Agency Bill analysis (2023), on file with the Senate Children, Families, and Elder Affairs Committee.
[160] Section 297.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles.
[161] Section 397.311(2)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
[162] Section 397.311(26), F.S.

- Intensive inpatient treatment;
- Residential treatment;
- Day or night treatment, including, day or night treatment with host homes, and community housing;
- Intensive outpatient treatment;
- Outpatient treatment;
- Continuing care;
- Intervention;
- Prevention; and
- Medication-assisted treatment for opiate addiction.

For licenses issued to addictions receiving facilities, inpatient detoxification, intensive inpatient treatment, and residential treatment, the DCF must certify and include on the service provider's license, the licensed bed capacity for each facility.[163] The licensed bed capacity is the total bed capacity[164], or total number of operational beds, within the facility. The service provider must notify the DCF of any change in the provider's licensed bed capacity equal to or greater than 10 percent, within 24 hours of the change.[165] Upon notification, the DCF must update the service provider's license to reflect the increased licensed bed capacity.[166]

State Forensic System

Criminal Defendants and Competency to Stand Trial

The Due Process Clause of the 14th Amendment to the United States Constitution prohibits the states from trying and convicting criminal defendants who are incompetent to stand trial.[167] The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[168] Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants must also manifest appropriate courtroom behavior and be able to testify relevantly.[169]

If a defendant is suspected of being mentally incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[170]

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[163] *Id.*
[164] Bed capacity is total number of operational beds and the number of those beds purchased by DCF. *DCF, substance Abuse and Mental Health Financial and Service Accountability Management System (FASAMS), Pamphlet 155-2 Chapter 8 Acute Care Data* (May 2021), available at https://www.myflfamilies.com/sites/default/files/2022-12/chapter_08_acute_care.pdf (last visited Jan. 26, 2024).
[165] *Id.*
[166] DCF, *Operating Procedures*, CF Operating Procedure No. 155-31 Mental Health/Substance Abuse, available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-31_district_substance_abuse_licensing_and_regulatory_policies_and_procedures.pdf (last visited Jan. 26, 2024).
[167] *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S. 961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).
[168] *Id. See also* Rule 3.210(a)(1), Fla.R.Crim.P.
[169] *Id. See also* s. 916.12, 916.3012, and 985.19, F.S.
[170] Rule 3.210, Fla.R.Crim.P.

If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[171] If the defendant is found to be mentally competent, the criminal proceeding resumes.[172] If the defendant is found to be mentally incompetent to proceed, the proceeding may not resume unless competency is restored.[173]

Involuntary Commitment of a Defendant Adjudicated Incompetent

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism, and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed due to mental illness[174] and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil[175] and forensic[176] treatment facilities by the circuit court.[177] However, in lieu of such commitment, the offender may be released on conditional release[178] by the circuit court if the person is not serving a prison sentence.[179] The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[180]

A civil facility is, in part, a mental health facility established within the DCF or by contract with DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[181]

A forensic facility is a separate and secure facility established within the DCF or the Agency for Persons with Disabilities (APD) to service forensic clients committed pursuant to ch. 916, F.S.[182] A separate and secure facility means a security-grade building for the purpose of separately housing individuals with mental illness from persons who have intellectual disabilities or autism

[171] *Id.*
[172] Rule 3.212, Fla.R.Crim P.
[173] *Id.*
[174] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." S. 916.12(1), F.S.
[175] A "civil facility" is a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. Section 916.106(4), F.S. The DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.
[176] Section 916.106(10), F.S.
[177] Sections 916.13, 916.15, and 916.302, F.S.
[178] Conditional release in release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[179] Section 916.17(1), F.S.
[180] Section 916.16(1), F.S.
[181] Section 916.106(4), F.S.
[182] Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.

and separately housing persons who have been involuntarily committed from non-forensic residents.[183]

A court may only involuntarily commit a defendant adjudicated incompetent to proceed for treatment upon finding, based on clear and convincing evidence, that:[184]

- The defendant has a mental illness and because of that mental illness:
  - The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative service, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; or
  - There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm.
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

If a person is committed pursuant to chapter 916, F.S., the administrator at the commitment facility must submit a report to the court:[185]

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.

Incompetent and Non-Restorable Defendants

If, after being committed, the defendant does not respond to treatment and is deemed non-restorable, the administrator of the commitment facility must notify the court by filing a report in the criminal case.[186] Those who are found to be non-restorable must be civilly committed or released.[187]

Non-Restorable Competency

An individual's competency is considered non-restorable when it is not likely that he or she will regain competency in the foreseeable future.[188] The DCF must make every effort to restore the

[183] *Id.*
[184] Section 916.13(1), F.S.
[185] Section 916.13(2), F.S.
[186] Section 916.13(2)(b), F.S.
[187] *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).
[188] DCF Operating Procedures No. 155-13, *Mental Health and Substance Abuse: Incompetent to Proceed and Non-Restorable Status*, September 2021, at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-13_incompetence_to_proceed_and_non-restorable_status.pdf (last visited Jan. 26, 2024).

competency of those committed pursuant to chapter 916, F.S., as incompetent to proceed. To ensure that all possible treatment options have been exhausted, all competency restoration attempts in less restrictive, step-down facilities should be considered prior to making a recommendation of non-restorability, particularly for individuals with violent charges.

Individuals who are found to be non-restorable in less than five years of involuntary commitment under section 916.13, F.S., require civil commitment proceedings or release. After an evaluator of competency has completed a competency evaluation and determined that there is not a substantial probability of competency restoration in the current environment in the foreseeable future, the evaluator must notify the appropriate recovery team[189] coordinator that the individual's competency does not appear to be restorable.

After notification, the recovery team's psychiatrist and clinical psychologist members must complete an independent evaluation to examine suitability for involuntary placement. Once the evaluation to examine suitability for involuntary placement is complete, the recovery team meets to consider the following:[190]

- Mental and emotional symptoms affecting competency to proceed;
- Medical conditions affecting competency to proceed;
- Current treatments and activities to restore competency to proceed;
- Whether relevant symptoms and conditions are likely to demonstrate substantive improvement;
- Whether relevant and feasible treatments remain that have not been attempted, including competency restoration training in a less restrictive, step-down facility; and
- Additional information as needed (including barriers to discharge, pending warrants and detainers, dangerousness, self-neglect).

The recovery team must document the team meeting and considerations for review, and, if applicable, the extent to which the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S., or involuntary inpatient placement pursuant to s. 394.467(1), F.S. Each member of the recovery team must provide a recommendation for disposition. Individuals with competency reported as non-restorable may be considered, as appropriate, for recommendations of release without legal conditions or involuntary examination or inpatient placement.[191]

Competency Evaluation Report

Following the completion of the competency evaluation, the evaluation to examine suitability for involuntary placement, and consideration of restorability, the evaluator of competency must

[189] A recovery team is an assigned group of individuals with specific responsibilities identified on the recovery plan including the resident, psychiatrist, guardian/guardian advocate (if resident has a guardian/guardian advocate), community case manager, family member, and other treatment professionals commensurate with the resident's needs, goals, and preferences. DCF Operating Procedures, No. 155-16, *Recovery Planning and Implementation in Mental Health Treatment Facilities*, May 16, 2019, available at: https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-16_recovery_planning_and_implementation_in_mental_health_treatment_facilities.pdf (last visited Jan. 26, 2024).

[190] *Id.*

[191] Chapter 394, F.S. or *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).

complete a competency evaluation report to the circuit court.[192] A competency evaluation report to the circuit court is a standardized mental health document that addresses relevant mental health issues and the individual's clinical status regarding competence to proceed. The report is completed, pursuant to s. 916.13(2), F.S., and DCF Operating Procedure 155-19 (Evaluation and Reporting of Competency to Proceed).[193] The operating procedures provide guidelines for the format and minimal content that must be included in the report. Evaluators may add other relevant and appropriate information as necessary to report on the individual's status and needs.[194] The report must include the following:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetence to proceed;
- The rationale to support why the individual is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion that the individual no longer meets the criteria for involuntary forensic commitment pursuant to s. 916.13, F.S.; and
- A recommendation whether the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S.

In order for a criminal court to order an involuntary examination under the Baker Act, there must be sworn evidence that the defendant meets the Baker Act criteria. Reports from mental health treatment facilities, such as the competency evaluation report, provide the court with sufficient basis/evidence to enter an order for involuntary examination. These reports may be sworn upon request of the court.[195]

A competency evaluation report is used in the process of a forensic commitment becoming a civil commitment. However, to be considered in a criminal court proceeding as evidence that the defendant meets Baker Act criteria, the report must be sworn. Currently, competency evaluation reports are not sworn.

Civil Commitment after Determination of Non-Restorable Defendant

Civil commitment is initiated in accordance with Part I of Chapter 394, F.S. The procedures in that part ensure the due process rights of a person are protected and require examination of a person believed to meet Baker Act criteria at a designated receiving facility.

If a non-restorable defendant is returned to court in accordance with ch. 916, F.S., the criminal court has authority to enter an order for involuntary Baker Act examination, and the defendant is taken to the nearest receiving facility. If found to meet criteria, a separate civil case is opened and the criminal case may be dismissed.[196]

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[192] DCF's Operating Procedure 155-19, *Evaluation and Reporting of Competency to Proceed*, February 15, 2019, available at: https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-19_evaluation_and_reporting_of_competency_to_proceed.pdf (last visited Jan. 26, 2024).
[193] *Id.*
[194] *Id.*
[195] DCF, Agency Bill analysis HB 201 (2023), p. 2 (on file with the Senate Children Families, and Elder Affairs committee).
[196] Section 916.145, F.S.

III. Effect of Proposed Changes:

Coordinated System of Care

Office of Children's Behavioral Health Ombudsman

The bill creates the Office of Children's Behavioral Health Ombudsman (Office) within the DCF for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and to use this information to improve the child and adolescent mental health treatment and support system. The bill requires the Office to:

- Receive and direct to the appropriate contact within the department, at the Agency for Health Care Administration, or the appropriate organizations providing behavioral health services complaints from children and adolescents and their families about the mental health treatment and support system.
- Maintain records of complaints received and the actions taken.
- Be a resource to identify and explain relevant polices or procedures to children, adolescents and their families about the child and adolescent mental health treatment and support system.
- Provide recommendations to the department to address systemic problems within the mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and these recommendations in the report required under s. 394.4573, F.S.
- Engage in functions that may improve the child and adolescent mental health treatment and support system.

The DCF and managing entities must place contact information for the Office prominently on a webpage related to children's behavioral health services on their websites.

Behavioral Health Interagency Collaboration

The bill creates the Behavioral Health Interagency Collaboration. The bill requires the DCF and AHCA to work together to jointly establish regional behavioral health interagency collaboratives throughout the state. The DCF is responsible for defining the region to be served by each collaborative and for facilitating meetings. The goal of the collaboratives are to identify and address ongoing challenges within the behavioral health system at the local level to improve the accessibility, availability, and quality of behavioral health services.

The regional collaborative membership shall, at a minimum, be composed of representatives from the following serving each region:

- Department of Children and Families;
- Agency for Health Care Administration;
- Agency for Persons with Disabilities;
- Department of Elder Affairs;
- Department of Health;
- Department of Education;
- School districts;
- Area Agencies on Aging;

- Community-based care lead agencies;
- Managing entities, as defined;
- Behavioral health services providers;
- Hospitals;
- Medicaid Managed Medical Assistance Plans;
- Police departments; and
- Sheriffs' Offices.

All entities represented on the regional collaboratives must provide assistance as appropriate and reasonably necessary to fulfill the goals of the regional collaboratives.

Baker Act Reporting Requirements

Designated Receiving and Treatment Facilities

The bill requires the DCF to publish the report on designated public receiving and treatment facilities' data on the department's website and removes the requirement to submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Baker Act Report

The bill requires the DCF to provide the data collected and used to prepare the annual Baker Act reports to the Louis de la Parte Florida Mental Health Institute (Institute). The bill requires the Institute to use the data to prepare the annual Baker Act reports. This provision will eliminate the need for the DCF to contract with the BARC for the statutorily required reports. The bill requires the annual reports to include, but need not be limited to, the following information:

- A state level analysis of involuntary examinations;
- A description of demographic characteristics of individuals and the geographic locations of involuntary examinations;
- Counts of the number of involuntary examinations at each receiving facility; and
- Reporting and analysis of trends for involuntary examinations within the state.

The report shall also include counts of and provide demographic, geographic, and other relevant information about individuals with a developmental disability or a traumatic brain injury or dementia who were taken to a receiving facility for involuntary examination pursuant to and determined not to have a co-occurring mental illness.

The bill requires the Institute to post the annual reports on its website and provide copies of the reports to the DCF, the President of the Senate, and the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives by November 30 of each year.

Report on Involuntary Examination of Minors

The bill requires the DCF to provide data collected by the agency on the initiation of involuntary examinations of children and students who are removed from a school. The bill also requires the DCF to provide child welfare data related to involuntary examinations and the Agency for Health Care Administration (AHCA) to provide Medicaid data, related to the involuntary examination

of children enrolled in Medicaid, to the Institute. The bill authorizes the DCF and AHCA to enter into any necessary agreements with the institute to provide the data. The bill requires the Institute to use the data to prepare reports analyzing the involuntary examination of minors.

The bill also requires the Institute to analyze service data collected on individuals who are high utilizers of crisis stabilization services provided in designated receiving facilities and identify patterns or trends and make recommendations to decrease avoidable admissions. The bill authorizes recommendations to be addressed in contracts with managing entities and in the contracts between AHCA for the Medicaid managed medical assistance plans. The Institute must publish the report on its website and submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, DCF, and AHCA.

Rights of Patients

If a facility restricts a patient's right to communicate, the bill requires a qualified professional to record the restriction and its underlying reasons in the patient's clinical file within 24 hours and to immediately serve the document of record to the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative.

Clinical Records

The bill grants the patient's legal custodian access to the appropriate information and clinical records of the patient and allows the legal custodian to authorize the release of the patient's clinical records.[197] This provision ensures that a patient's legal custodian may authorize the release of the patient's clinical records to the appropriate persons to ensure the continuity of care of the patient's health care or mental health care. For instance, when a child who is in the legal custody of the Department of Juvenile Justice (DJJ) is released to DJJ from a mental health facility, some facilities may not provide DJJ with the child's discharge paperwork. In this case, DJJ's healthcare practitioners would have to contact the facility to get the information, or if the facility refused to release the information, the child's parent or guardian. If the child's parent or guardian is not responsive then DJJ would not have access to the child's discharge information for purposes of continuity of care. The addition of legal custodian ensures that DJJ can request and have access to the child's discharge information and other clinical records.

Involuntary Services

The process and criteria for involuntary outpatient services and involuntary inpatient placement are very similar. The bill combines these statutes and creates an "Involuntary Services" statute to remove duplicative functions, simplify procedures and to create a more streamlined and patient-tailored process for committing individuals to involuntary services. The new statute largely maintains current law for involuntary outpatient services and involuntary inpatient placement. However, the bill does make some substantive changes to the process, which are discussed below.

[197] Legal custody means the legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care. See s. 39.01, F.S.

The bill allows those under age 18 access to all involuntary services. This will increase access to services, as current law required the individual be 18 or older for involuntary outpatient services.

The bill removes the involuntary outpatient services 36-month involuntary commitment criteria which required the person to have been committed to a receiving or treatment facility or received mental health services in a forensic or correctional facility within the preceding 36-month period.

The bill creates a single petition process for involuntary services. This gives the court more flexibility and authority to order a person to either involuntary outpatient services, involuntary inpatient placement, or a combination of both. The bill also creates a single certificate for petitioning for involuntary services and requires the court order for both involuntary outpatient services and involuntary inpatient placement be included in the patient's clinical record.

The bill replaces the term "treatment plan" with "services plan." This change helps ensure that the terminology aligns with the process. The bill authorizes a service provider to file a petition for involuntary services if the provider is treating the patient being petitioned. If a patient receiving involuntary outpatient services fails or refuses to comply with the court ordered services plan, the bill requires the service provider to report such noncompliance to the court. The bill requires a clinical psychologist or psychiatric nurse providing a second opinion to support a recommendation for involuntary outpatient services to have examined the patient within the preceding 30 days. The bill also requires the court to accept electronic signatures on petitions and other documentation attached to the petition.

The bill authorizes civil patients to be admitted to state treatment facilities without undergoing a transfer evaluation. This could result in a greater number of admissions to state treatment facilities. The bill also removes the requirement that the court receive and consider a transfer evaluation before a hearing for involuntary placement. Instead, it allows the state attorney to establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation before the close of the state's case. This change will likely improve court efficiencies as hearings will not need to be delayed because a transfer evaluation is unavailable before the hearing. The bill codifies current hearsay rules by specifying that the court may not consider substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. This expands current law which prohibits such orders for persons with traumatic brain injury or dementia and ensures that limited state treatment facility beds remain for individuals who are appropriate for treatment.

The bill makes technical and conforming changes and updates cross references.

Involuntary Services Hearing

The bill expands the grounds under which a patient's presence at the hearing may be waived. Specifically, the bill authorizes the court to waive a patient's presence if the patient knowingly,

intelligently and voluntarily waives the right to be present. However, the bill maintains the requirement that the patient's counsel have no objections for the waiver to take effect.

The bill allows the state attorney to have access to records to litigate at the hearing. However, the bill requires that the records remain confidential and may not be used for criminal investigation or prosecution purposes or any purpose other than civil commitment. Additionally, the bill requires the court to allow testimony deemed relevant from family members regarding the patient's prior history and how it relates to their current condition and from other specified individuals, including medical professions, which aligns this provision with the Marchman Act.

Remote Hearing

The bill allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing.

Discharge Planning

The bill amends the discharge procedures to require receiving and treatment facilities to include in their discharge planning and procedures documentation of the patient's needs and actions to address those needs. The bill requires the facilities to refer patients being discharged to care coordination services if the patient meets certain criteria and to recovery support opportunities through coordinated specialty care programs, including, but not limited to, connection to a peer specialist.

During the discharge transition process, the bill requires the receiving facility to coordinate face-to-face or through electronic means, while in the presence of the patient, discharge plans to a less restrictive community behavioral health provider, a peer specialist, a case manager, or a care coordination service.

To further enhance the discharge planning process, the bill requires receiving facilities to implement policies and procedures outlining strategies for how they will comprehensively address the needs of the individuals who demonstrate a high utilization of receiving facility services to avoid or reduce future use of crisis stabilization services. More specifically, the bill requires the provider to develop and include in discharge paperwork a personalized crisis prevention plan for the patient that identifies stressors, early warning signs of symptoms, and strategies to manage crisis.

The bill requires receiving facilities to have a staff member engage a family member, legal guardian, legal representative, or a natural support of the patient's in discharge planning and meet with them face to face or through other electronic means to review the discharge plan. Further, the bill provides direction to initiate a referral to an appropriate provider to continue care for instances where certain levels of care are not immediately available at discharge.

Psychiatric Nurses Under the Baker Act

The bill requires psychiatric nurses working within receiving and treatment facilities to work within the framework of an established protocol with a psychiatrist when performing certain tasks under the Baker Act. Specifically, a psychiatric nurse must work within the framework of an established protocol with a psychiatrist when:

- Providing an opinion to a court on the competence of an individual, in a facility, to consent to treatment in a proceeding to appoint a guardian advocate;
- Documenting in a patient's clinical records, who was voluntarily admitted into a treatment facility, that the patient is able to give express and informed consent for admission; and
- Providing a second opinion to support a recommendation that a patient receive involuntary services, after personally examining the patient to determine if he or she meets the criteria for such services.

Background Screening for Mental Health Care Personnel

The bill exempts physicians licensed under chapter 458 or 459 and nurses licensed under chapter 464 who were required to undergo background screening by the Department of Health as part of his or her initial licensure or licensure renewal, and who have an active and unencumbered license, from the background screening requirements for employment for mental health and substance use programs. Currently, these licensed medical professionals must undergo level 2 screening once for licensure and then again for employment purposes, which can cause delays for onboarding personnel. The bill will allow background screening for licensure of these medical professionals to satisfy employment screening when providing a service within their scope of practice.

Marchman Act

Rights of Individuals

The bill amends s. 397.501, F.S., to require each individual receiving substance abuse services to be informed that the individual has the right to be represented by counsel in any judicial proceeding for involuntary substance abuse treatment.

Definitions

The bill updates and expands the definition of "impaired" or "substance abuse impaired" to include having a substance use disorder or a condition involving the use of illicit or prescription drugs. This change reflects current DSM-5 criteria and takes into consideration the use of drugs other than alcohol by substance abuse impaired individuals.

This change will likely grant courts more latitude in who may be ordered for involuntary treatment.

Unlawful activities relating to assessment and treatment

The bill amends s. 397.581, F.S., to make it unlawful for a person to *knowingly and willfully* (as opposed to just *willfully* under current law):

- Furnish false information for the purpose of obtaining emergency or other involuntary admission of another person;
- Cause or otherwise secure, or conspire with or assist another to cause or secure, any emergency or other involuntary procedure of another person under false pretenses; or
- Cause, or conspire with or assist another to cause, without lawful justification, the denial to any person of the right to involuntary procedures under chapter 397.

The bill expands the scope of law and makes it not only unlawful for an individual to knowingly and willfully provide false information, or to conspire or assist with conspiring, to obtain involuntary admission for his or herself, but also makes it unlawful for the individual to commit such acts against another person.

Court Involved Involuntary Admissions

The bill revises language to specify that courts have jurisdiction over involuntary treatment petitions, rather than involuntary assessment and stabilization petitions. The bill also specifies that petitions may be filed with the clerk of court in the county where the subject of the petition resides instead of where he or she is located.

Involuntary Assessment and Stabilization

The bill repeals all provisions relating to court-ordered, involuntary assessments and stabilization under the Marchman Act and consolidates them into a new involuntary treatment process under ss. 397.6951-397.6975, F.S.

Involuntary Services

The bill amends the involuntary services criteria to allow the court to involuntarily admit an individual who *reasonably appears to meet*, rather than meets, the eligibility criteria and has previously been involved in at least one of the four other involuntary admissions procedures within a specified period. However, it amends the period for when the person has been assessed by a qualified professional to within the past 30 days, rather than five days.

The bill allows a petition to be accompanied by a certificate or report of a qualified professional or licensed physician who has examined the respondent within 30 days before the petition was filed. The certificate must contain the professional's findings and, if the respondent refuses to submit to an examination, must document the refusal. The bill specifies that in the event of an emergency requiring an expedited hearing, the petition must contain documented reasons for expediting the hearing.

The bill amends the time period in which the court is required to schedule a hearing on the petition to within 10 court working days, rather than five, unless a continuance is granted. With the elimination of the separate involuntary assessment and stabilization procedures, this means the total time for when a court would have to hear a petition for involuntary assessment and

stabilization (within 10 days) and a petition for involuntary services (within 5 days) has been reduced from 15 to 10 court working days under the consolidated procedure.

The bill specifies that the clerk, rather than the court, must issue the summons to the respondent and requires a law enforcement agency to effectuate service for the initial hearing, unless the court authorizes disinterested private process servers to serve parties. The bill authorizes the court to waive or prohibit service of process fees for respondents deemed indigent under current law.

In light of the consolidation of the court involved involuntary admission procedures, the bill provides that, in the case of an emergency, or when upon review of the petition the court determines that an emergency exists, the court may rely exclusively upon the contents of the petition and, without an attorney being appointed, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending. The court may further order a law enforcement officer or other designated agent of the court to:

- Take the respondent into custody and deliver him or her to either the nearest appropriate licensed service provider or a licensed service provider designated by the court to be evaluated; and
- Serve the respondent with the notice of hearing and a copy of the petition.

In such instances, the bill requires a service provider to promptly inform the court and parties of the respondent's arrival and refrain from holding the respondent for longer than 72 hours of observation thereafter, unless:

- The service provider seeks additional time in accordance with the law and the court, after a hearing, grants that motion;
- The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which will serve to extend the amount of time the respondent may be held for observation until the issue is resolved; or
- The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.

Under the bill, if the ex parte order was not executed by the initial hearing date, it is deemed void. If the respondent does not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets the Marchman Act commitment criteria and that a substance abuse emergency exists, the bill allows the court to issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

- Must continue the case for no more than 10 court working days; and
- May order a law enforcement officer or other designated agent of the court to:
    - Take the respondent into custody and deliver him or her to be evaluated either by the nearest appropriate licensed service provider or by a licensed service provider designated by the court; and
    - If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

The bill requires the petitioner and the service provider to promptly inform the court that the respondent has been assessed so that the court can schedule a hearing as soon as is reasonable. The bill requires the service provider to serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. If the respondent has not been assessed within 90 days, the bill requires the court to dismiss the case.

The bill provides an exception to the requirement that a respondent be present at the hearing, allowing absence from the hearing if he or she knowingly, intelligently, and voluntarily waives their right to appear, or upon proof of service, the court finds that the respondent's presence is inconsistent with their best interests or will likely be harmful to the respondent.

To be consistent with the changes in the Baker Act, the bill allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing. The bill requires the court to hear and review all relevant evidence, including testimony from family members familiar with the respondent's history and how it relates to the respondent's current condition.

The bill prohibits a respondent from being involuntarily ordered into treatment if a clinical assessment is not performed, unless the respondent is present in court and expressly waives the assessment. Outside of emergency situations, if the respondent is not, or previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it appears that the respondent qualifies for involuntary treatment services, the bill requires the court to issue an involuntary assessment and stabilization order to determine the correct level of treatment for the respondent. In Marchman Act cases where an assessment was attached to the petition, the bill allows the respondent to request, or the court on its own motion to order, an independent assessment by a court-appointed physician or another physician agreed to by the court and the parties.

An assessment order issued in accordance with the bill is valid for 90 days, and if the respondent is present or there is either proof of service or the respondent's whereabouts are known, the bill provides that the involuntary treatment hearing may be continued for no more than 10 court working days. Otherwise, the petitioner and the service provider are required to promptly inform the court that the respondent has been assessed in order for the court to schedule a hearing as soon as practicable. The bill mandates that the service provider serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. The bill requires the assessment to occur before the new hearing date. However, if there is evidence indicating that the respondent will not voluntarily appear at the hearing, or is a danger to self or others, the bill permits the court to enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the new hearing date. As stated above, the bill requires the court to dismiss the case if the respondent still has not been assessed after 90 days.

Assessments conducted by a qualified professional under the bill must occur within 72 hours after the respondent arrives at a licensed service provider unless the respondent displays signs of withdrawal or a need to be either detoxified or treated for a medical condition. In such cases, the amount of time the respondent may be held for observation is extended until that issue is

resolved. If the assessment is conducted by someone other than a licensed physician, the bill requires review by a licensed physician within the 72-hour period.

If the respondent is a minor, the bill requires the assessment to begin within the first 12 hours after the respondent is admitted, in alignment with the Baker Act, and the service provider may file a motion to extend the 72 hours of observation by petitioning the court in writing for additional time. The bill requires a service provider to provide copies of the motion to all parties in accordance with applicable confidentiality requirements. After the hearing, the bill permits the court to grant additional time or expedite the respondent's involuntary treatment hearing. However, the involuntary treatment hearing can only be expedited by agreement of the parties on the hearing date or if there is notice and proof of service. If the court grants the service provider's petition, the service provider is permitted to hold the respondent until its extended assessment period expires or until the expedited hearing date. In cases where the original or extended observation period ends on a weekend or holiday, the provider is only permitted to hold the respondent until the next court working day.

The bill requires the qualified professional, in accordance with applicable confidentiality requirements, to provide copies of the completed report to the court and all relevant parties and counsel. The report is required to contain a recommendation on the level, if any, of substance abuse and any co-occurring mental health treatment the respondent may need. The qualified professional's failure to include a treatment recommendation results in the petition's dismissal.

The bill grants the court the authority to order a law enforcement officer or other designated agent of the court to take the respondent into custody and transport him or her to or from the treating or assessing service provider and the court for their hearing.

The bill provides that the court may initiate involuntary examination proceedings at any point during the hearing if it has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to neglect or injure himself, herself, or another if not committed, or otherwise meets the involuntary commitment provisions covered under the Baker Act. The bill requires any treatment order to include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

The bill amends provisions relating to court determinations and the effect of a court order for involuntary services, providing that, to qualify for involuntary outpatient treatment, an individual must be accompanied by a willing, able, and responsible advocate, or a social worker or case manager of a licensed service provider, who will inform the court if the individual fails to comply with the outpatient program. The bill also requires that if outpatient treatment is offered in lieu of inpatient treatment, it must be available in the county where the respondent resides and it may be offered for up to six months if it is established that the respondent meets involuntary placement criteria and has been involuntarily ordered into inpatient treatment at least twice during the past 36 months, the outpatient provider is in the same county as the respondent, and the respondent's treating physician certifies that the respondent can be more appropriately treated on an outpatient basis and can follow an outpatient care plan.

For cases resulting in an order for involuntary treatment services, the bill authorizes the court to retain jurisdiction over the case, including but not limited to, monitoring compliance with

treatment, changing the treatment modality, or initiating contempt of court proceedings for violations of court orders. The bill authorizes hearings for involuntary services to be set by the motion of the parties or under the court's won authority. The motion of notice for such hearings must be served in accordance with relevant court procedural rules.

The bill permits the court to order drug tests for respondents in Marchman Act cases. The bill expands who may file a petition to extend treatment to include the person who filed the petition for the initial treatment order if the petition includes supporting documentation from the service provider. The bill removes the current requirement that the petition be filed at least 10 days before the expiration of the current court-ordered treatment period. The bill also reduces the court's requirement for scheduling a hearing from 15 days to within 10 court working days of the petition to extend being filed.

The bill requires the treatment facility to implement discharge planning and procedures for a respondent's release from involuntary treatment services. In alignment with the bill's new Baker Act requirements, discharge planning and procedures must include and document the respondent's needs, and actions to address those needs, for, at a minimum:

- follow-up behavioral health appointments,
- information on how to obtain prescribed medications, and
- information pertaining to available living arrangements, transportation, and referral to recovery support opportunities, including but not limited to, connection to a peer specialist.

The bill requires the Louis de la Parte Florida Mental Health Institute to publish a Marchman Act report on its website and provide copies of the report to DCF, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each year.

The bill makes technical and conforming changes, including changing instances of 'treatment' or 'services' to 'treatment services' in reference to involuntary petitions and admissions under the Marchman Act. This change ensures consistency in usage of the terms.

Licensed Bed Capacity for Substance Abuse Service Providers

The bill prohibits a service provider operating an addictions receiving facility or providing detoxification on a non-hospital inpatient basis from exceeding its licensed capacity by more than 10 percent. A service provider also may not exceed its licensed capacity for more than three consecutive working days or for more than 7 days in a month. This is similar to the requirements for crisis stabilization units under the Baker Act.

Involuntary Commitment of a Defendant Adjudicated Incompetent

Current law requires DCF to conduct a competency evaluation and submit a report to the circuit court, upon determination that a defendant will not, or is unlikely to, regain competency to proceed. The bill requires DCF to submit this report within 30 days of the determination. The bill also requires the report to be sworn and provided to counsel in addition to the court. Further, the bill establishes the minimum information that must be included in the competency evaluation report. The minimum reporting requirements are current DCF procedures in which the bill codifies into law, except that the bill authorizes the defendant to be considered for involuntary

services, rather than an involuntary examination.[198] The report must include, at a minimum, the following information regarding the defendant:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetency to proceed;
- The rationale to support why the defendant is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion regarding whether the defendant no longer meets the criteria for involuntary forensic commitment; and
- A recommendation on whether the defendant meets the criteria for involuntary services pursuant to s. 394.467, F.S.

These provisions ensure that the appropriate report is submitted to the court to initiate the process of moving a forensic commitment to a civil commitment. They also ensure that all relevant information is received timely and that the court may respond to the information in a timely manner.

The bill authorizes a defendant, who meets the criteria for involuntary examination as determined by an independent clinical opinion, to appear remotely for the hearing. The bill also authorized the remote appearance of witnesses.

The bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[198] *Id*, note 26.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a significant fiscal impact to the DCF and the state court system as delineated below. The bill provides $50,000,000 to the DCF with the flexibility to fund the various provisions of the bill as there is an impact to the department and among providers that offer different behavioral health services.

- **Reporting Requirements**- The DCF will be required to create and publish a report on Marchman Act services. The bill also requires the DCF and the Agency for Health Care Administration to analyze the service data collected on individuals who are high users of crisis stabilization services. There is a resulting workload cost associated with these provisions.
- **Involuntary Services**- The bill provides judges with greater flexibility regarding the type of involuntary services to which to order a person, rather than being required to order the specific services for which the petition was filed or no services at all. This is likely to increase demand for involuntary outpatient services, as these services have lower utilization rates.
- **Marchman Act Services**- The bill makes it easier for family and friends of individuals with substance use disorder to successfully file pro se for Marchman Act services by streamlining the complicated two-petition process. This may result in increased demand for substance abuse treatment services as judges act on these petitions to order individuals into those services.
- **Discharge Planning**- The bill modifies the discharge procedures for receiving facilities by requiring the referral of patients to follow-up supports and services; face-to-face or electronic interaction with the patient and persons in their support system to communicate about follow-up care; and development of a personalized crisis prevention plan for the patient in an effort to mitigate repeated utilization of receiving facility services. There is an expected workload increase to the facilities to implement these provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: ss. 394.455, 394.4572, 394.459, 394.4599, 394.461, 394.4615, 394.462, 394.4625, 394.463, 394.4655, 394.467, 394.468, 394.495, 394.496, 394.499, 394.875, 394.9085, 397.305, 397.311, 397.401, 397.4073, 397.501, 397.581, 397.675, 397.681, 397.6751, 397.6818, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.6975, 397.6977, 409.972, 464.012, 744.2007, 916.13, F.S.

This bill creates the following sections of the Florida Statutes: ss. 397.68111, 397.68112, 397.68141, and 397.68151, F.S.

This bill repeals the following sections of the Florida Statutes: ss. 397.6811, 397.6814, 397.6815, 397.6819, 397.6821, 397.6822, 397.6978, F.S.

IX. Additional Information:

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

CS by Fiscal Policy February 27, 2024:
The amendment makes the following changes to the bill:
The Baker Act

- Amends practitioner responsibilities within receiving and treatment facilities;
- Restores a current law provision requiring a psychiatric nurse to get approval from the psychiatrist who initiated the Baker Act on a patient before releasing the patient;
- Allows for telemedicine in a receiving facility;
- Provides what is required to be considered when performing an involuntary examination, including, but is not limited to:
  - The patient's treatment history at the facility and any information regarding the patient's condition and behavior provided by knowledgeable individuals.
  - Repeated admittance for involuntary examination during a short period of time despite implementation of appropriate discharge plans;
  - An individual's basic needs being served while admitted to the facility may not be considered evidence that criteria are met.
- Makes changes to involuntary criteria. Specifically:
  - Restores separate criteria for involuntary outpatient services and involuntary inpatient placement;
  - Requires the service provider to report to the court when a patient does not comply with an involuntary outpatient services order;
  - Allows a service provider to petition for involuntary services;
  - Replaces a term "treatment plan" with "services plan."
  - Removes language allowing for PAs and clinical social workers to provide a second opinion in certain cases.
- Requires the annual Baker Act report to include information on individuals with dementia, traumatic brain injuries, and developmental disabilities who were taken to a

receiving facility for involuntary examination and determined not to have a co-occurring mental illness;
- Reorients the role and responsibilities of the Baker Act Reporting Center;
- Removes expansion of the magistrate's role;
- Requires courts to accept electronic signatures on petitions and other required attached documents;
- Requires a court to grant a patient's request for an initial continuance up to 7 calendar days, but allows the patient to request additional continuances up to 21 calendar days in total, which shall be granted by a showing of good cause and due diligence by the patient and patient's counsel before the request is made.
- Allows the state to request a continuance of up to 7 days but only allows the court to grant the continuance by a showing of good cause and due diligence shown by the state prior to the request being made. Clarifies the state's failure to review evidence or to attempt to contact witnesses does not qualify as a reason for a continuance.
- Permits a county transportation plan to allow for other jurisdictions to pay for alternate Baker Act transportation;
- Requires law enforcement officers transporting a minor to a designated Baker Act receiving facility to provide the parent or legal guardian with the name and contact information of the facility to which the officer is transporting the minor;
- Creates the Office of Children's Behavioral Health Ombudsman at THE DCF;
- Establishes regional collaboratives to facilitate enhanced interagency communication; and
- Allows a legal custodian to access a child's clinical records for behavioral health treatment.
- Requires discharge plans to include a review of previous discharge plans and solutions to the problems experienced in the implementation of previous plans.

Marchman Act:
- Allows a respondent to waive the right to representation if the court finds the waiver is made knowingly, intelligently, and voluntarily;
- To qualify for involuntary outpatient treatment, the bill requires an individual to be accompanied by a willing, able, and responsible advocate, social worker or a case manager of a licensed service provider, who will inform the court if the individual fails to comply with the outpatient program;
- For an individual ordered to outpatient services, requires the treatment to be available in the county where the individual resides;
- Authorizes the court to retain jurisdiction for involuntary treatment cases in certain instances; and
- Requires the Baker Act Reporting Center to prepare an annual Marchman Act report.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
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The Committee on Fiscal Policy (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (23) of section 394.455, Florida Statutes, is amended to read:

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

(23) "Involuntary examination" means an examination performed under s. 394.463, s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811~~ to determine whether a

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person qualifies for involuntary services.

Section 2. Paragraph (e) is added to subsection (1) of section 394.4572, Florida Statutes, to read:

394.4572 Screening of mental health personnel. —

(1)

(e) A physician licensed under chapter 458 or chapter 459 or a nurse licensed under chapter 464 who was required to undergo background screening by the Department of Health as part of his or her initial licensure or the renewal of licensure, and who has an active and unencumbered license, is not subject to background screening pursuant to this section.

Section 3. Paragraph (d) of subsection (3) and paragraph (d) of subsection (5) of section 394.459, Florida Statutes, are amended to read:

394.459 Rights of patients.—

(3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.—

(d) The administrator of a receiving or treatment facility may, upon the recommendation of the patient's attending physician, authorize emergency medical treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient, and permission of the patient or the patient's guardian or guardian advocate cannot be obtained.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(d) If a patient's right to communicate with outside persons; receive, send, or mail sealed, unopened correspondence; or receive visitors is restricted by the facility, a qualified professional must record the restriction and its underlying reasons in the patient's clinical file within 24 hours. The

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notice of the restriction must immediately ~~written notice of such restriction and the reasons for the restriction shall~~ be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative. ~~A qualified professional must document any restriction within 24 hours, and such restriction shall be recorded on the patient's clinical record with the reasons therefor.~~ The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every 3 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (e).

Section 4. Subsection (3) of section 394.4598, Florida Statutes, is amended to read:

394.4598 Guardian advocate.—

(3) A facility requesting appointment of a guardian advocate must, prior to the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including the information about the ethics of medical decisionmaking. Before asking a guardian advocate to give consent to treatment for a patient, the facility shall provide to the guardian advocate sufficient information so that the guardian advocate can decide whether to give express and informed consent to the treatment, including information that the treatment is essential to the care of the patient, and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. Before giving consent to treatment, the guardian advocate must meet and talk with the patient and the patient's

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physician or psychiatric nurse practicing within the framework of an established protocol with a psychiatrist in person, if at all possible, and by telephone, if not. The decision of the guardian advocate may be reviewed by the court, upon petition of the patient's attorney, the patient's family, or the facility administrator.

Section 5. Paragraph (d) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(d) The written notice of the filing of the petition for involuntary services for an individual being held must contain the following:

1. Notice that the petition for:

a. Involuntary services ~~inpatient treatment~~ pursuant to s. 394.467 has been filed with the circuit court and the address of such court ~~in the county in which the individual is hospitalized and the address of such court~~; or

b. Involuntary outpatient services pursuant to s. 394.467 ~~s. 394.4655~~ has been filed with the criminal county court, as defined in s. 394.4655(1), ~~or the circuit court, as applicable, in the county in which the individual is hospitalized~~ and the address of such court.

2. Notice that the office of the public defender has been appointed to represent the individual in the proceeding, if the individual is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify in support of continued detention.

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4. Notice that the individual, the individual's guardian, guardian advocate, health care surrogate or proxy, or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the individual.

5. Notice that the individual is entitled to an independent expert examination and, if the individual cannot afford such an examination, that the court will provide for one.

Section 6. Subsection (2) and paragraph (d) of subsection (4) of section 394.461, Florida Statutes, are amended to read:

394.461 Designation of receiving and treatment facilities and receiving systems.—The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designation for failure to comply with this part and rules adopted under this part. The department may issue a conditional designation for up to 60 days to allow the implementation of corrective measures. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient shall not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before the close of the state's case-in-chief in ~~a court~~ hearing for involuntary placement ~~in a state treatment facility~~, the state may establish that the transfer evaluation was performed and the document was properly executed by providing the court with a copy of the transfer evaluation.



The court may not ~~shall receive and~~ consider the substantive information ~~documented~~ in the transfer evaluation unless the evaluator testifies at the hearing. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

(4) REPORTING REQUIREMENTS.—

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report shall include individual facilities' data, as well as statewide totals. The report shall be posted on the department's website ~~submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~.

Section 7. Paragraph (a) of subsection (2) and subsection (3) of section 394.4615, Florida Statutes, is amended to read:

394.4615 Clinical records; confidentiality.—

(2) The clinical record shall be released when:

(a) The patient or the patient's guardian or legal custodian authorizes the release. The guardian, ~~or~~ guardian advocate, or legal custodian shall be provided access to the appropriate clinical records of the patient. The patient or the patient's guardian, ~~or~~ guardian advocate, or legal custodian may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care. A receiving facility must document that, within 24 hours of admission, individuals admitted on a voluntary basis have been provided with the option to authorize the release of information from their clinical



record to the individual's health care surrogate or proxy, attorney, representative, or other known emergency contact.

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat. When such communication has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary services ~~outpatient placement~~ or for preparing the proposed services ~~treatment~~ plan pursuant to s. 394.4655 or s. 394.467 ~~s. 394.4655~~, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service



provider under s. 394.4655 or s. 394.467 ~~identified in s. 394.4655(7)(b)2.~~, in accordance with state and federal law.

Section 8. Section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan shall be developed and implemented by each county in collaboration with the managing entity in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the counties shall notify the managing entity and provide it with a copy of the agreement. The transportation plan shall describe methods of transport to a facility within the designated receiving system for individuals subject to involuntary examination under s. 394.463 or involuntary admission under s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811~~, and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate. The plan shall comply with the transportation provisions of this section and ss. 397.6772, 397.6795, ~~397.6822,~~ and 397.697.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the



appropriate facility within the designated receiving system pursuant to a transportation plan.

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county or as otherwise provided in the transportation plan developed by the county; and

b. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2. The entity providing transportation may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor, if the person receiving the transportation has applicable coverage.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport of the patient. Such company must be insured and provide no less than $100,000 in



liability insurance with respect to the transport of patients.

(d) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(e) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination pursuant to s. 394.463, the law enforcement officer shall transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan. Persons who meet the statutory guidelines for involuntary admission pursuant to s. 397.675 may also be transported by law enforcement officers to the extent resources are available and as otherwise provided by law. Such persons shall be transported to an appropriate facility within the designated receiving



system pursuant to a transportation plan.

(h) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person must first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan. The receiving facility shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide examination and treatment to the person where he or she is held or by telemedicine.

(i) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) The appropriate facility within the designated receiving system pursuant to a transportation plan must accept persons brought by law enforcement officers, or an emergency medical transport service or a private transport company



authorized by the county, for involuntary examination pursuant to s. 394.463.

(l) The appropriate facility within the designated receiving system pursuant to a transportation plan must provide persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, pursuant to s. 397.675, a basic screening or triage sufficient to refer the person to the appropriate services.

(m) Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that reflects a single set of protocols for the safe and secure transportation and transfer of custody of the person. Each law enforcement agency shall provide a copy of the protocols to the managing entity.

(n) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(o) This section may not be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of

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transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how the hospitalized patient will be transported to, from, and between facilities in a safe and dignified manner.

(b) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(c) A company that contracts with one or more counties to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(d) County or municipal law enforcement and correctional personnel and equipment may not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary services ~~placement~~ pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

Section 9. Paragraphs (a) and (f) of subsection (1) and subsection (5) of section 394.4625, Florida Statutes, are amended to read:

394.4625 Voluntary admissions.—

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(1) AUTHORITY TO RECEIVE PATIENTS.—

(a) A facility may receive for observation, diagnosis, or treatment any adult ~~person 18 years of age or older~~ who applies by express and informed consent for admission or any minor ~~person age 17 or younger~~ whose parent or legal guardian applies for admission. Such person may be admitted to the facility if found to show evidence of mental illness and to be suitable for treatment, and:

1. If the person is an adult, is found~~,~~ to be competent to provide express and informed consent; or

2. If the person is a minor, the parent or legal guardian provides express and informed consent and the facility performs~~, and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility. A person age 17 or younger may be admitted only after~~ a clinical review to verify the voluntariness of the minor's assent.

(f) Within 24 hours after admission of a voluntary patient, the treating ~~admitting~~ physician or psychiatric nurse practicing within the framework of an established protocol with a psychiatrist shall document in the patient's clinical record that the patient is able to give express and informed consent for admission. If the patient is not able to give express and informed consent for admission, the facility shall either discharge the patient or transfer the patient to involuntary status pursuant to subsection (5).

(5) TRANSFER TO INVOLUNTARY STATUS.—When a voluntary patient, or an authorized person on the patient's behalf, makes a request for discharge, the request for discharge, unless freely and voluntarily rescinded, must be communicated to a



physician, clinical psychologist with at least 3 years of postdoctoral experience in the practice of clinical psychology, or psychiatrist as quickly as possible, but not later than 12 hours after the request is made. If the patient meets the criteria for involuntary placement, the administrator of the facility must file with the court a petition for involuntary placement, within 2 court working days after the request for discharge is made. If the petition is not filed within 2 court working days, the patient shall be discharged. Pending the filing of the petition, the patient may be held and emergency treatment rendered in the least restrictive manner, upon the ~~written~~ order of a physician or psychiatric nurse practicing within the framework of an established protocol with a psychiatrist, if it is determined that such treatment is necessary for the safety of the patient or others.

Section 10. Subsection (1), paragraphs (a), (e), (f), (g), and (h) of subsection (2), and subsection (4) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to



suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient’s clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working

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days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may ~~shall~~ take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this section ~~subparagraph~~ shall restrain the person in the least restrictive manner available and appropriate under the circumstances. If transporting a minor and the parent or legal guardian of the minor is present, before departing, the law enforcement officer shall provide the parent or legal guardian of the minor with the name, address, and contact information for the facility within the designated receiving system to which the law enforcement officer is transporting the minor, subject to any safety and welfare concerns for the minor. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information



may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody and include all emergency contact information required under subparagraph 2. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of



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informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(e) The department shall receive and maintain the copies of ex parte orders, involuntary ~~outpatient~~ services orders issued pursuant to ss. 394.4655 and 394.467 ~~s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467~~, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be provided to the institute established under s. 1004.44 by the department and used by the institute to prepare annual reports analyzing the data obtained from these documents, without including the personal identifying information of the patient. ~~identifying patients, and~~ The information in the reports may include, but need not be limited to, a state level analysis of involuntary examinations, including a description of demographic characteristics of individuals and the geographic locations of

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involuntary examinations; counts of the number of involuntary examinations at each receiving facility; and reporting and analysis of trends for involuntary examinations within the state. The report shall also include counts of and provide demographic, geographic, and other relevant information about individuals with a developmental disability, as defined in s. 393.063, or a traumatic brain injury or dementia who were taken to a receiving facility for involuntary examination pursuant to s. 394.463 and determined not to have a co-occurring mental illness. The institute shall post the reports on its website and provide copies of such reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives by November 30 of each year.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Such examination shall include, but not be limited to, consideration of the patient's treatment history at the facility and any information regarding the patient's condition and behavior provided by knowledgeable individuals. Repeated admittance for involuntary examination during a short period of time despite implementation of appropriate discharge plans may be evidence that criteria under subparagraph (b)1. are met. An individual's basic needs being served while admitted to the facility may not be considered evidence that criteria under subparagraph (b)1. are met. Emergency treatment may be provided upon the order of a

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physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, if the receiving facility is owned or operated by a hospital, health system, or nationally accredited community mental health center, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. The release may be approved through telehealth.

(g) The examination period must be for up to 72 hours and begins when a patient arrives at the receiving facility. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement



as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary services shall be filed in the circuit court ~~if inpatient treatment is deemed necessary~~ or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. The ~~When a~~ petition ~~is to be filed for involuntary outpatient placement, it~~ shall be filed by one of the petitioners specified in s. 394.467, and the court shall dismiss an untimely filed petition ~~s. 394.4655(4)(a)~~. ~~A petition for involuntary inpatient placement shall be filed by the facility administrator.~~ If a patient's 72-hour examination period ends on a weekend or holiday, including the hours before the ordinary business hours on the morning of the next working day, and the receiving facility:

a. Intends to file a petition for involuntary services, such patient may be held at the ~~a receiving~~ facility through the next working day thereafter and the ~~such~~ petition ~~for involuntary services~~ must be filed no later than such date. If the ~~receiving~~ facility fails to file the ~~a~~ petition by ~~for involuntary services at~~ the ordinary close of business on the next working day, the patient shall be released from the receiving facility following approval pursuant to paragraph (f).

b. Does not intend to file a petition for involuntary services, the ~~a~~ receiving facility may postpone release of a patient until the next working day thereafter only if a qualified professional documents that adequate discharge



planning and procedures in accordance with s. 394.468, and approval pursuant to paragraph (f), are not possible until the next working day.

(h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a facility within the examination period specified in paragraph (g). The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary ~~outpatient~~ services pursuant to s. 394.467 ~~s. 394.4655(2) or involuntary inpatient placement pursuant to s. 394.467(1)~~, the patient may be offered voluntary outpatient or inpatient services ~~or placement~~, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary ~~inpatient~~ services ~~or involuntary outpatient placement~~ must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. 395.1041(3)(c) have been met.

(4) DATA ANALYSIS.—

(a) The department shall provide the data ~~Using data~~

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collected under paragraph (2)(a) and s. 1006.07(10), and child welfare data related to involuntary examinations, to the institute established under 1004.44. ~~department~~ The Agency for Health Care Administration shall provide Medicaid data to the institute, requested by the institute, related to involuntary examination of children enrolled in Medicaid for the purpose of administering the program and improving service provision for such children. The department and agency shall enter into any necessary agreements with the institute to provide such data. The institute shall use such data to~~,~~ at a minimum, analyze data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school; identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student; study root causes for such patterns, trends, or repeated involuntary examinations; and make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations.

(b) The institute shall analyze service data on individuals who are high utilizers of crisis stabilization services provided in designated receiving facilities, and shall, at a minimum, identify any patterns or trends and make recommendations to decrease avoidable admissions. Recommendations may be addressed in the department's contracts with the behavioral health managing entities and in the contracts between the Agency for Health Care Administration and the Medicaid managed medical assistance plans.

(c) The institute ~~department~~ shall publish ~~submit~~ a report on its findings and recommendations on its website and submit


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the report to the Governor, the President of the Senate, ~~and~~ the Speaker of the House of Representatives, the department and the Agency for Health Care Administration by November 1 of each odd-numbered year.

Section 11. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services.—

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

(a) "Court" means a circuit court or a criminal county court.

(b) "Criminal county court" means a county court exercising its original jurisdiction in a misdemeanor case under s. 34.01.

(c) "Involuntary outpatient placement" means involuntary outpatient services as defined in s. 394.467, F.S.

(2) A criminal county court may order an individual to involuntary outpatient placement under s. 394.467. ~~CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES.—A person may be ordered to involuntary outpatient services upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria:~~

~~(a) The person is 18 years of age or older.~~

~~(b) The person has a mental illness.~~

~~(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~

~~(d) The person has a history of lack of compliance with treatment for mental illness.~~

~~(e) The person has:~~

~~1. At least twice within the immediately preceding 36~~



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~~months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or~~

~~2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months.~~

~~(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary.~~

~~(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).~~

~~(h) It is likely that the person will benefit from involuntary outpatient services.~~

~~(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.~~

~~(3) INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. A patient who is being recommended for involuntary outpatient services by the administrator of the facility where the patient has been examined may be retained by the facility~~



~~after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3 years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.~~

~~2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services. Before filing a petition for involuntary outpatient services, the administrator of the facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services, unless the person is otherwise~~



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~~participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.~~

~~3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~



~~(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services, the administrator of the facility may, before the expiration of the period during which the facility is authorized to retain the patient, recommend involuntary outpatient services. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3 years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate, and the certificate must be made a part of the patient's clinical record.~~

~~(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient services certificate and a copy of the state mental health discharge form to the managing entity in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services must be filed in the county where the patient will be~~



~~residing.~~

~~2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before the order for involuntary outpatient services and must, before filing a petition for involuntary outpatient services, certify to the court whether the services recommended in the patient's discharge plan are available and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.~~

~~3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(4) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a) A petition for involuntary outpatient services may be filed by:~~

~~1. The administrator of a receiving facility; or~~

~~2. The administrator of a treatment facility.~~

~~(b) Each required criterion for involuntary outpatient~~



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~~services must be alleged and substantiated in the petition for involuntary outpatient services. A copy of the certificate recommending involuntary outpatient services completed by a qualified professional specified in subsection (3) must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed plan are available. If the necessary services are not available, the petition may not be filed. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(c) The petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.~~

~~(5) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the~~



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~~appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services. An attorney who represents the patient must be provided access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(6) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.~~

~~(7) HEARING ON INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. The court shall hold the hearing on involuntary outpatient services within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must be held in the county where the petition is filed, must be as convenient to the patient as is consistent with orderly procedure, and must be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.~~

~~2. The court may appoint a magistrate to preside at the hearing. One of the professionals who executed the involuntary outpatient services certificate shall be a witness. The patient~~



~~and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.~~

~~(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services pursuant to subsection (2), the court shall issue an order for involuntary outpatient services. The court order shall be for a period of up to 90 days. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services when the order expires or any time the patient no longer meets the criteria for involuntary placement. Upon discharge, the service provider shall send a certificate of discharge to the court.~~

~~2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if~~


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~~funding is not available for the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court. The order may be submitted electronically through existing data systems. After the order for involuntary services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~3. If, in the clinical judgment of a physician, the patient has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether~~



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~~modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are governed by chapter 397.~~

~~(d) At the hearing on involuntary outpatient services, the court shall consider testimony and evidence regarding the patient's competence to consent to services. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.~~

~~(e) The administrator of the receiving facility or the~~



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~~designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychologist or a clinical social worker.~~

~~(8) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. If the person continues to meet the criteria for involuntary outpatient services, the service provider shall, at least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the court that issued the order for involuntary outpatient services a petition for continued involuntary outpatient services. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.~~

~~2. The existing involuntary outpatient services order remains in effect until disposition on the petition for continued involuntary outpatient services.~~

~~3. A certificate shall be attached to the petition which includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services, and an individualized plan of continued treatment.~~

~~4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if applicable. When the~~



~~petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.~~

~~(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(c) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7), except that the time period included in paragraph (2)(e) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.~~

~~(d) Notice of the hearing must be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to~~



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~~a period of continued outpatient services without a court hearing.~~

~~(e) The same procedure must be repeated before the expiration of each additional period the patient is placed in treatment.~~

~~(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.~~

Section 12. Section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary services ~~inpatient placement~~.—

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

(a) "Court" means a circuit court.

(b) "Involuntary inpatient placement" means placement in a secure receiving or treatment facility providing stabilization and treatment services to a person 18 years of age or older who does not voluntarily consent to services under this chapter, or a minor who does not voluntarily assent to services under this chapter.

(c) "Involuntary outpatient services" means services provided in the community to a person who does not voluntarily consent to or participate in services under this chapter.

(d) "Services plan" means an individualized plan detailing the recommended behavioral health services and supports based on a thorough assessment of the needs of the patient, to safeguard and enhance the patient's health and well-being in the community.



(2) ~~(1)~~ CRITERIA FOR INVOLUNTARY SERVICES.—A person may be ordered by a court to be provided ~~for~~ involuntary services ~~inpatient placement for treatment~~ upon a finding of the court, by clear and convincing evidence, that the person meets the following criteria:

(a) *Involuntary outpatient services.*—A person ordered to involuntary outpatient services must meet the following criteria:

1. The person has a mental illness and because of his or her mental illness:

a. Is unlikely to voluntarily participate in a recommended services plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary; or

b. He or she is unable to determine for himself or herself whether services are necessary.

2. The person is unlikely to survive safely in the community without supervision, based on a clinical determination.

3. The person has a history of lack of compliance with treatment for mental illness.

4. In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).

5. It is likely that the person will benefit from involuntary outpatient services.



6. All available less restrictive alternatives that would offer an opportunity for improvement of the person's condition have been deemed to be inappropriate or unavailable.

(b) *Involuntary inpatient placement.*—A person ordered to involuntary inpatient placement must meet the following criteria:

1.~~(a)~~ The person ~~He or she~~ has a mental illness and because of his or her mental illness:

~~1.~~a. He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or

b. He or she Is unable to determine for himself or herself whether inpatient placement is necessary; and

2.a. He or she is incapable of surviving alone or with the help of willing, able, and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. Without treatment, there ~~There~~ is a substantial likelihood that in the near future the person ~~he or she~~ will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting to cause, or threatening to cause such harm; and

c.~~(b)~~ All available less restrictive treatment alternatives

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that would offer an opportunity for improvement of the person's ~~his or her~~ condition have been deemed ~~judged~~ to be inappropriate or unavailable.

(3)~~(2)~~ RECOMMENDATION FOR INVOLUNTARY SERVICES AND ~~ADMISSION TO A~~ TREATMENT ~~FACILITY~~.—A patient may be recommended for involuntary inpatient placement, involuntary outpatient services, or a combination of both.

(a) A patient may be retained by a facility for involuntary services ~~or involuntarily placed in a treatment facility~~ upon the recommendation of the administrator of the facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. However, if a patient who is being recommended for only involuntary outpatient services has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services.

(b) The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist with at least 3 years of clinical experience, ~~or~~ another psychiatrist, or a psychiatric nurse practicing within the framework of an established protocol with a psychiatrist, both of whom have personally examined the patient ~~within the preceding 72 hours, that the criteria for involuntary~~ services ~~inpatient placement are met~~. For involuntary inpatient placement, the patient must have been examined within the preceding 72 hours. For involuntary outpatient services the patient must have been examined within the preceding 30 days.

(c) If ~~However, if the administrator certifies that~~ a



psychiatrist or clinical psychologist with at least 3 years of clinical experience is not available to provide a ~~the~~ second opinion, the petitioner must certify that a clinical psychologist is not available and the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a clinical psychologist, or ~~by~~ a psychiatric nurse.

(d) Any opinion authorized in this subsection may be conducted through a face-to-face or in-person examination, ~~in person,~~ or by electronic means. Recommendations for involuntary services must be ~~Such recommendation shall be~~ entered on a petition for involuntary services ~~inpatient placement certificate~~, which shall be made a part of the patient's clinical record. The petition must either authorize the facility to retain the patient pending completion of a hearing or authorize ~~that authorizes~~ the facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

(4)~~(3)~~ PETITION FOR INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—

(a) A petition for involuntary services may be filed by:

1. The administrator of a receiving ~~the~~ facility;

2. The administrator of a treatment facility; or

3. A service provider who is treating the person being petitioned.

(b) A ~~shall file a~~ petition for involuntary inpatient placement, or inpatient placement followed by outpatient services, must be filed in the court in the county where the patient is located.



(c) A petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside.

(d)1. The petitioner must state in the petition:

a. Whether the petitioner is recommending inpatient placement, outpatient services, or both.

b. The length of time recommended for each type of involuntary services.

c. The reasons for the recommendation.

2. If recommending involuntary outpatient services, or a combination of involuntary inpatient placement and outpatient services, the petitioner must identify the service provider that has agreed to provide services for the person under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. If recommending an immediate order to involuntary outpatient services, the petitioner shall prepare a written proposed services plan in consultation with the patient or the patient’s guardian advocate, if appointed, for the court’s consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The services plan must specify the likely needed level of care, including the use


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of medication, and anticipated discharge criteria for terminating involuntary outpatient services. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. If the services in the proposed services plan are not available, the petitioner may not file the petition. The petitioner must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested service. The service provider who accepts the patient for involuntary outpatient services is responsible for the development of a comprehensive treatment plan.

(e) Each required criterion for the recommended involuntary services must be alleged and substantiated in the petition. A copy of the recommended services plan, if applicable, must be attached to the petition. The court must accept petitions and other documentation with electronic signatures.

(f) When the petition has been filed ~~Upon filing~~, the clerk of the court shall provide copies of the petition and, if applicable, the recommended services plan to the department, the managing entity, the patient, the patient's guardian or representative, ~~and~~ the state attorney, and the public defender or the patient's private counsel ~~of the judicial circuit in which the patient is located~~. A fee may not be charged for the filing of a petition under this subsection.

(5) ~~(4)~~ APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary services


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~~inpatient placement~~, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel or ineligible. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary services. Any attorney who represents ~~representing~~ the patient shall be provided ~~have~~ access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(6)~~(5)~~ CONTINUANCE OF HEARING.—The patient and the state are independently ~~is~~ entitled~~, with the concurrence of the patient's counsel,~~ to seek a~~at least one~~ continuance of the hearing ~~for up to 4 weeks~~. The patient must be granted a request for an initial continuance of up to 7 calendar days. The patient may request additional continuances for up to 21 additional calendar days in total, which shall only be granted by a showing of good cause and due diligence by the patient and patient's counsel before requesting the continuance. The state may request one continuance of up to 7 calendar days, which shall only be granted by a showing of good cause and due diligence by the state before requesting the continuance. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not warrant a continuance.

(7)~~(6)~~ HEARING ON INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—

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(a)1. The court shall hold a ~~the~~ hearing on the involuntary services petition ~~inpatient placement~~ within 5 court working days after the filing of the petition, unless a continuance is granted.

2. The court must hold any hearing on involuntary outpatient services in the county where the petition is filed. A hearing on involuntary inpatient placement, or a combination of involuntary inpatient placement and involuntary outpatient services, ~~Except for good cause documented in the court file, the hearing~~ must be held in the county or the facility, as appropriate, where the patient is located, except for good cause documented in the court file.

3. A hearing on involuntary services must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, or the patient knowingly, intelligently, and voluntarily waives his or her right to be present, and if the patient's counsel does not object, the court may waive the attendance ~~presence~~ of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. The facility shall make the respondent's clinical records available to the state attorney and the respondent's attorney so that the state can evaluate and prepare its case. However, these records shall remain confidential, and the state attorney may not use any record obtained under this part for



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criminal investigation or prosecution purposes, or for any purpose other than the patient's civil commitment under this chapter ~~petitioning facility administrator, as the real party in interest in the proceeding~~. (b)~~3.~~ The court may appoint a magistrate to preside at the hearing. Upon a finding of good cause, the court may permit all witnesses, including, but not limited to, medical professionals who are or have been involved with the patient's treatment, to remotely attend and testify at the hearing under oath via audio-video teleconference. A witness intending to remotely attend and testify must provide the parties with all relevant documents by the close of business on the day before the hearing. One of the professionals who executed the ~~petition for~~ involuntary services ~~inpatient placement~~ certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided for by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from persons, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(c)~~(b)~~ At the hearing, the court shall consider testimony and evidence regarding the patient's competence to consent to



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services and treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(8) ORDERS OF THE COURT.—

(a)1. If the court concludes that the patient meets the criteria for involuntary services, the court may order a patient to involuntary inpatient placement, involuntary outpatient services, or a combination of involuntary services depending on the criteria met and which type of involuntary services best meet the needs of the patient. However, if the court orders the patient to involuntary outpatient services, the court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The petitioner must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court.

2. The order must specify the nature and extent of the patient's mental illness.

3.a. An order for only involuntary outpatient services shall be for a period of up to 90 days.

b. An order for involuntary inpatient placement, or a combination of inpatient placement and outpatient services, may be up to 6 months.

4. An order for a combination of involuntary services shall



specify the length of time the patient shall be ordered for involuntary inpatient placement and involuntary outpatient services.

5. The order of the court and the patient's services plan, if applicable, must be made part of the patient's clinical record.

(b) If the court orders a patient into involuntary inpatient placement, the court ~~it~~ may order that the patient be transferred to a treatment facility, or~~,~~ if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate facility, or that the patient receive services~~,~~ on an involuntary basis~~, for up to 90 days~~. ~~However, any order for involuntary mental health services in a treatment facility may be for up to 6 months. The order shall specify the nature and extent of the patient's mental illness.~~ The court may not order an individual with a developmental disability as defined in s. 393.063 or a traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a state treatment facility. ~~The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status.~~

(c) If at any time before the conclusion of a ~~the~~ hearing on involuntary services, ~~inpatient placement~~ it appears to the court that the patient ~~person does not meet the criteria for involuntary inpatient placement under this section, but~~ instead meets the criteria for involuntary ~~outpatient services, the court may order the person evaluated for involuntary outpatient services pursuant to s. 394.4655. The petition and hearing~~


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~~procedures set forth in s. 394.4655 shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary~~ admission or treatment pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment ~~for a period of 5 days~~ pursuant to s. 397.6757 ~~s. 397.6811~~. Thereafter, all proceedings are governed by chapter 397.

~~(d) At the hearing on involuntary inpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.~~

(d) ~~(c)~~ The administrator of the petitioning facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services or the administrator of a treatment facility if the patient is ordered for involuntary inpatient placement~~, whether by civil or criminal court~~. The documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychiatric nurse, a clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied by adequate orders and documentation.

(9) SERVICE PLAN MODIFICATION—After the order for involuntary outpatient services is issued, the service provider

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and the patient may modify the services plan. For any material modification of the services plan to which the patient or, if one is appointed, the patient's guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the services plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(10) NONCOMPLIANCE WITH INVOLUNTARY OUTPATIENT SERVICES.—If, in the clinical judgment of a physician, a patient receiving involuntary outpatient services has failed or has refused to comply with the services plan ordered by the court, and efforts were made to solicit compliance, the service provider must report such noncompliance to the court. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing services plan and must attempt to continue to engage the patient in treatment. For any material modification of the services plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the services plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(11) ~~(7)~~ PROCEDURE FOR CONTINUED INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—



(a) A petition for continued involuntary services shall be filed if the patient continues to meets the criteria for involuntary services.

(b)1. If a patient receiving involuntary outpatient services continues to meet the criteria for involuntary outpatient services, the service provider shall file in the court that issued the initial order for involuntary outpatient services a petition for continued involuntary outpatient services.

2. If a patient in involuntary inpatient placement

~~(a) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in accordance with s. 120.57(1), except that any order entered by the administrative law judge is final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are governed by s. 916.15.~~

~~(b) If the patient~~ continues to meet the criteria for involuntary inpatient placement and is being treated at a ~~treatment~~ receiving facility, the administrator shall, before the expiration of the period the ~~treatment~~ receiving facility is authorized to retain the patient, file in the court that issued the initial order for involuntary inpatient placement, a petition requesting authorization for continued involuntary inpatient placement.

3. Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in



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accordance with s. 120.57(1), except that any order entered by the judge is final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are governed by s. 916.15.

4. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

5. The existing involuntary services order shall remain in effect until disposition on the petition for continued involuntary services.

(c) The petition ~~request~~ must be accompanied by a statement from the patient's physician, psychiatrist, psychiatric nurse, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services ~~involuntarily placed~~, and an individualized plan of continued treatment~~.~~ developed in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the petition and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(d) The court shall appoint counsel to represent the person who is the subject of the petition for continued involuntary services in accordance to the provisions set forth in subsection (5), unless the person is otherwise represented by counsel or ineligible.

(e) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the



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order for involuntary outpatient services. However, the patient may agree to a period of continued outpatient services without a court hearing.

(f) Hearings on petitions for continued involuntary inpatient placement in receiving facilities must be held in the county or the facility, as appropriate, where the patient is located.

(g) The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7).

(h) Notice of the hearing must be provided as set forth ~~provided~~ in s. 394.4599.

(i) If a patient's attendance at the hearing is voluntarily waived, the ~~administrative law~~ judge must determine that the patient knowingly, intelligently, and voluntarily waived his or her right to be present, ~~waiver is knowing and voluntary~~ before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the ~~administrative law~~ judge finds that attendance at the hearing is not consistent with the best interests of the patient, the ~~administrative law~~ judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath~~,~~ and the proceedings must be recorded.

~~(c) Unless the patient is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is located.~~

(k)~~(d)~~ If at a hearing it is shown that the patient


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continues to meet the criteria for involuntary services ~~inpatient placement~~, the court ~~administrative law judge~~ shall issue an ~~sign the~~ order for continued involuntary outpatient services ~~inpatient placement~~ for up to 90 days or~~. However, any order for~~ involuntary inpatient placement, or ~~mental health services in~~ a combination of involuntary services ~~treatment facility may be~~ for up to 6 months. The same procedure shall be repeated before the expiration of each additional period the patient is retained.

(l) If the patient has been ordered to undergo involuntary services and has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by s. 394.4598. If the patient has been ordered to undergo involuntary inpatient placement only and the patient's competency to consent to treatment is restored, the administrative law judge may issue a recommended order, to the court that found the patient incompetent to consent to treatment, that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(m) ~~(c)~~ If continued involuntary inpatient placement is necessary for a patient in involuntary inpatient placement who was admitted while serving a criminal sentence, but his or her sentence is about to expire, or for a minor involuntarily placed, but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing continued involuntary inpatient placement.

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The procedure required in this subsection must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(12) ~~(8)~~ RETURN TO FACILITY.—If a patient has been ordered to undergo involuntary inpatient placement ~~involuntarily~~ held at a treatment facility under this part leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her return to the facility. The administrator may request the assistance of a law enforcement agency in this regard.

(13) DISCHARGE—The patient shall be discharged upon expiration of the court order or at any time the patient no longer meets the criteria for involuntary services, unless the patient has transferred to voluntary status. Upon discharge, the service provider or facility shall send a certificate of discharge to the court.

Section 13. Subsection (2) of section 394.468, Florida Statutes, is amended and subsection (3) is added to that section to read:

394.468 Admission and discharge procedures.—

(2) Discharge planning and procedures for any patient's release from a receiving facility or treatment facility must include and document the patient's needs, and actions to address such needs, for ~~consideration of~~, at a minimum:

(a) Follow-up behavioral health appointments;

(b) Information on how to obtain prescribed medications; and

(c) Information pertaining to:

1. Available living arrangements;

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2. Transportation; and

(d) Referral to:

1. Care coordination services. The patient must be referred for care coordination services if the patient meets the criteria as a member of a priority population as determined by the department under s. 394.9082(3)(c) and is in need of such services.

2.~~3.~~ Recovery support opportunities under s. 394.4573(2)(l), including, but not limited to, connection to a peer specialist.

(3) During the discharge transition process and while the patient is present unless determined inappropriate by a physician or psychiatric nurse practicing within the framework of an established protocol with a psychiatrist, a receiving facility shall coordinate, face-to-face or through electronic means, discharge plans to a less restrictive community behavioral health provider, a peer specialist, a case manager, or a care coordination service. The transition process must, at a minimum, include all of the following criteria:

(a) Implementation of policies and procedures outlining strategies for how the receiving facility will comprehensively address the needs of patients who demonstrate a high use of receiving facility services to avoid or reduce future use of crisis stabilization services. For any such patient, policies and procedures must include, at a minimum, a review of the effectiveness of previous discharge plans created by the facility for the patient, and the new discharge plan must address problems experienced with implementation of previous discharge plans.



(b) Developing and including in discharge paperwork a personalized crisis prevention plan that identifies stressors, early warning signs or symptoms, and strategies to deal with crisis.

(c) Requiring a staff member to seek to engage a family member, legal guardian, legal representative, or natural support in discharge planning and meet face to face or through electronic means to review the discharge instructions, including prescribed medications, follow-up appointments, and any other recommended services or follow-up resources, and document the outcome of such meeting.

(d) When the recommended level of care at discharge is not immediately available to the patient, the receiving facility must, at a minimum, initiate a referral to an appropriate provider to meet the needs of the patient to continue care until the recommended level of care is available.

Section 14. Section 394.4915, Florida Statutes, is created to read:

394.4915 Office of Children's Behavioral Health Ombudsman.-The Office of Children's Behavioral Health Ombudsman is established within the department for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and use such information to improve the child and adolescent mental health treatment and support system. The department and managing entities shall include information about and contact information for the office placed prominently on their websites on easily accessible web pages related to children and adolescent behavioral health services. To the



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extent permitted by available resources, the office shall, at a minimum:

(1) Receive and direct to the appropriate contact within the department, the Agency for Health Care Administration, or the appropriate organizations providing behavioral health services complaints from children and adolescents and their families about the child and adolescent mental health treatment and support system.

(2) Maintain records of complaints received and the actions taken.

(3) Be a resource to identify and explain relevant policies or procedures to children, adolescents, and their families about the child and adolescent mental health treatment and support system.

(4) Provide recommendations to the department to address systemic problems within the child and adolescent mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and recommendations in the report required under s. 394.4573.

(5) Engage in functions that may improve the child and adolescent mental health treatment and support system.

Section 15. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455 ~~professional as defined in s.~~



~~394.455(5), (7), (33), (36), or (37);~~

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~qualified professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491.

Section 16. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 17. Paragraph (a) of subsection (2) of section 394.499, Florida Statutes, is amended to read:

394.499 Integrated children's crisis stabilization unit/juvenile addictions receiving facility services.—

(2) Children eligible to receive integrated children's crisis stabilization unit/juvenile addictions receiving facility services include:

(a) A minor whose parent makes ~~person under 18 years of age for whom~~ voluntary application based on the parent's express and informed consent, and the requirements of s. 394.4625(1)(a) are met ~~is made by his or her guardian, if such person is found to show evidence of mental illness and to be suitable for treatment~~



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~~pursuant to s. 394.4625. A person under 18 years of age may be admitted for integrated facility services only after a hearing to verify that the consent to admission is voluntary.~~

Section 18. Paragraphs (a) and (d) of subsection (1) of section 394.875, Florida Statutes, are amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(1)(a) The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician, ~~or~~ psychiatrist, or psychiatric nurse practicing within the framework of an established protocol with a psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay ~~and shall be limited in size to a maximum of 30 beds~~.

~~(d) The department is directed to implement a demonstration project in circuit 18 to test the impact of expanding beds authorized in crisis stabilization units from 30 to 50 beds. Specifically, the department is directed to authorize existing public or private crisis stabilization units in circuit 18 to expand bed capacity to a maximum of 50 beds and to assess the impact such expansion would have on the availability of crisis stabilization services to clients.~~

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Section 19. Section 394.90826, Florida Statutes, is created to read:

394.90826 Behavioral Health Interagency Collaboration.—

(1) The department and the Agency for Health Care Administration shall jointly establish behavioral health interagency collaboratives throughout the state with the goal of identifying and addressing ongoing challenges within the behavioral health system at the local level to improve the accessibility, availability, and quality of behavioral health services. The objectives of the regional collaboratives are to:

a. Facilitate enhanced interagency communication and collaboration.

b. Develop and promote regional strategies tailored to address community-level challenges in the behavioral health system.

(2) The regional collaborative membership shall at a minimum be composed of representatives from the following, serving the region:

a. Department of Children and Families;

b. Agency for Health Care Administration;

c. Agency for Persons with Disabilities;

d. Department of Elder Affairs;

e. Department of Health;

f. Department of Education;

g. School districts;

h. Area Agencies on Aging;

i. Community-based care lead agencies, as defined in s. 409.986(3)(d);

j. Managing entities, as defined in s. 394.9082;



k. Behavioral health services providers;

l. Hospitals;

m. Medicaid Managed Medical Assistance Plans;

n. Police departments; and

o. Sheriffs' Offices.

(3) Each regional collaborative shall define the objectives of that collaborative based upon the specific needs of the region and local communities located within the region, to achieve the specified goals.

(4) The department shall define the region to be served by each collaborative and shall be responsible for facilitating meetings.

(5) All entities represented on the regional collaboratives shall provide assistance as appropriate and reasonably necessary to fulfill the goals of the regional collaboratives.

Section 20. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification ~~services~~," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(26)(a)4. ~~397.311(26)(a)3.~~, 397.311(26)(a)1., and 394.455(41) ~~394.455(40)~~, respectively.

Section 21. Subsection (3) of section 397.305, Florida Statutes, is amended to read:

397.305 Legislative findings, intent, and purpose.—

(3) It is the purpose of this chapter to provide for a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery

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support services in the most appropriate and least restrictive environment which promotes long-term recovery while protecting and respecting the rights of individuals, primarily through community-based private not-for-profit providers working with local governmental programs involving a wide range of agencies from both the public and private sectors.

Section 22. Subsections (19) and (23) of section 397.311, Florida Statutes, are amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(19) "Impaired" or "substance abuse impaired" means having a substance use disorder or a condition involving the use of alcoholic beverages, illicit or prescription drugs, or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems or ~~and~~ cause socially dysfunctional behavior.

(23) "Involuntary treatment services" means an array of behavioral health services that may be ordered by the court for persons with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders.

Section 23. Subsection (6) is added to section 397.401, Florida Statutes, to read:

397.401 License required; penalty; injunction; rules waivers.—

(6) A service provider operating an addictions receiving facility or providing detoxification on a nonhospital inpatient basis may not exceed its licensed capacity by more than 10 percent and may not exceed their licensed capacity for more than 3 consecutive working days or for more than 7 days in 1 month.

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Section 24. Paragraph (i) is added to subsection (1) of section 397.4073, Florida Statutes, to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(i) A physician licensed under chapter 458 or chapter 459 or a nurse licensed under chapter 464 who was required to undergo background screening by the Department of Health as part of his or her initial licensure or the renewal of licensure, and who has an active and unencumbered license, is not subject to background screening pursuant to this section.

Section 25. Subsection (8) of section 397.501, Florida Statutes, is amended to read:

397.501 Rights of individuals.—Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must ensure the protection of such rights.

(8) RIGHT TO COUNSEL.—Each individual must be informed that he or she has the right to be represented by counsel in any judicial ~~involuntary~~ proceeding for involuntary ~~assessment, stabilization, or~~ treatment services and that he or she, or if the individual is a minor his or her parent, legal guardian, or legal custodian, may apply immediately to the court to have an attorney appointed if he or she cannot afford one.

Section 26. Section 397.581, Florida Statutes, is amended to read:

397.581 Unlawful activities relating to assessment and treatment; penalties.—



(1) A person may not knowingly and willfully:

(a) Furnish ~~furnishing~~ false information for the purpose of obtaining emergency or other involuntary admission of another person ~~for any person is a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000~~.

(b) ~~(2)~~ Cause or otherwise secure, or conspire with or assist another to cause or secure ~~Causing or otherwise securing, or conspiring with or assisting another to cause or secure, without reason for believing a person to be impaired,~~ any emergency or other involuntary procedure of another ~~for the~~ person under false pretenses ~~is a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000~~.

(c) ~~(3)~~ Cause, or conspire with or assist another to cause, without lawful justification ~~Causing, or conspiring with or assisting another to cause~~, the denial to any person of any right accorded pursuant to this chapter.

(2) A person who violates subsection (1) commits ~~is~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000.

Section 27. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason

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to believe that the person is substance abuse impaired or has a substance use disorder and a co-occurring mental health disorder and, because of such impairment or disorder:

(1) Has lost the power of self-control with respect to substance abuse; and

(2)(a) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or

(b) Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

Section 28. Subsection (1) of section 397.6751, Florida Statutes, is amended to read:

397.6751 Service provider responsibilities regarding involuntary admissions.—

(1) It is the responsibility of the service provider to:

(a) Ensure that a person who is admitted to a licensed service component meets the admission criteria specified in s.



397.675;

(b) Ascertain whether the medical and behavioral conditions of the person, as presented, are beyond the safe management capabilities of the service provider;

(c) Provide for the admission of the person to the service component that represents the most appropriate and least restrictive available setting that is responsive to the person's treatment needs;

(d) Verify that the admission of the person to the service component does not result in a census in excess of its licensed service capacity;

(e) Determine whether the cost of services is within the financial means of the person or those who are financially responsible for the person's care; and

(f) Take all necessary measures to ensure that each individual in treatment is provided with a safe environment, and to ensure that each individual whose medical condition or behavioral problem becomes such that he or she cannot be safely managed by the service component is discharged and referred to a more appropriate setting for care.

Section 29. Section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of ~~involuntary assessment and stabilization petitions and~~ involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person is located. The clerk of


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the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings. The alleged impaired person is named as the respondent.

(2) RIGHT TO COUNSEL.— A respondent has the right to counsel at every stage of a judicial proceeding relating to a petition for his or her ~~involuntary assessment and a petition for his or her~~ involuntary treatment for substance abuse impairment, but the respondent may waive that right if the respondent is present and the court finds that such waiver is made knowingly, intelligently, and voluntarily. A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel and to the benefits of s. 57.081. If the court believes that the respondent needs or desires the assistance of counsel, the court shall appoint such counsel for the respondent without regard to the respondent's wishes. If the respondent is a minor not otherwise represented in the proceeding, the court shall immediately appoint a guardian ad litem to act on the minor's behalf.

Section 30. Section 397.693, Florida Statutes, is renumbered as 397.68111, Florida Statutes, and amended to read:

397.68111 ~~397.693~~ Involuntary treatment.—A person may be the subject of a petition for court-ordered involuntary treatment pursuant to this part~~,~~ if that person:

(1) Reasonably appears to meet ~~meets~~ the criteria for involuntary admission provided in s. 397.675; ~~and:~~

(2)~~(1)~~ Has been placed under protective custody pursuant to s. 397.677 within the previous 10 days;



(3) ~~(2)~~ Has been subject to an emergency admission pursuant to s. 397.679 within the previous 10 days; or

(4) ~~(3)~~ Has been assessed by a qualified professional within 30 ~~5~~ days~~;~~

~~(4) Has been subject to involuntary assessment and stabilization pursuant to s. 397.6818 within the previous 12 days; or~~

~~(5) Has been subject to alternative involuntary admission pursuant to s. 397.6822 within the previous 12 days~~.

Section 31. Section 397.695, Florida Statutes, is renumbered as section 397.68112, Florida Statutes, and amended to read:

397.68112 ~~397.695~~ Involuntary services; persons who may petition.—

(1) If the respondent is an adult, a petition for involuntary treatment services may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or an adult who has direct personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(2) If the respondent is a minor, a petition for involuntary treatment services may be filed by a parent, legal guardian, or service provider.

(3) The court may prohibit, or a law enforcement agency may waive, any service of process fees if a petitioner is determined to be indigent.

Section 32. Section 397.6951, Florida Statutes, is renumbered as 397.68141, Florida Statutes, and amended to read:

397.68141 ~~397.6951~~ Contents of petition for involuntary



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treatment services.—A petition for involuntary services must contain the name of the respondent; the name of the petitioner ~~or petitioners~~; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known; ~~the findings and recommendations of the assessment performed by the qualified professional;~~ and the factual allegations presented by the petitioner establishing the need for involuntary ~~outpatient~~ services for substance abuse impairment. The factual allegations must demonstrate:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired;

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and

(3)(a) The reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless the court orders the involuntary services; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(4) The petition may be accompanied by a certificate or report of a qualified professional who examined the respondent within 30 days before the petition was filed. The certificate or report must include the qualified professional's findings relating to his or her assessment of the patient and his or her treatment recommendations. If the respondent was not assessed



before the filing of a treatment petition or refused to submit to an evaluation, the lack of assessment or refusal must be noted in the petition.

(5) If there is an emergency, the petition must also describe the respondent's exigent circumstances and include a request for an ex parte assessment and stabilization order that must be executed pursuant to s. 397.68151.

Section 33. Section 397.6955, Florida Statutes, is renumbered as section 397.68151, Florida Statutes, and amended to read:

397.68151 ~~397.6955~~ Duties of court upon filing of petition for involuntary services.—

(1) Upon the filing of a petition for involuntary services for a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If the court appoints counsel for the person, the clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel, created pursuant to s. 27.511, of the appointment. The office of criminal conflict and civil regional counsel shall represent the person until the petition is dismissed, the court order expires, ~~or~~ the person is discharged from involuntary treatment services, or the office is otherwise discharged by the court. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.



(2) The court shall schedule a hearing to be held on the petition within 10 court working ~~5~~ days unless a continuance is granted. The court may appoint a magistrate to preside at the hearing.

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be personally delivered to the respondent. The clerk ~~court~~ shall also issue a summons to the person whose admission is sought and unless a circuit court's chief judge authorizes disinterested private process servers to serve parties under this chapter, a law enforcement agency must effect such service on the person whose admission is sought for the initial treatment hearing.

Section 34. Section 397.6818, Florida Statutes, is amended to read:

397.6818 Court determination.—

(1) When the petitioner asserts that emergency circumstances exist, or when upon review of the petition the court determines that an emergency exists, the court may rely solely on the contents of the petition and, without the appointment of an attorney, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending.

(2) The court may further order a law enforcement officer



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or another designated agent of the court to:

(a) Take the respondent into custody and deliver him or her for evaluation to either the nearest appropriate licensed service provider or a licensed service provider designated by the court.

(b) Serve the respondent with the notice of hearing and a copy of the petition.

(3) The service provider may not hold the respondent for longer than 72 hours of observation, unless:

(a) The service provider seeks additional time under s. 397.6957(1)(c) and the court, after a hearing, grants that motion;

(b) The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until the issue is resolved but no later than the scheduled hearing date, absent a court-approved extension; or

(c) The original or extended observation period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, in which case the provider may hold the respondent until the next court working day.

(4) If the ex parte order was not executed by the initial hearing date, it shall be deemed void. However, should the respondent not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets this chapter’s commitment criteria and that a substance abuse emergency exists, the court may issue or reissue an ex



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parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

(a) Shall continue the case for no more than 10 court working days; and

(b) May order a law enforcement officer or another designated agent of the court to:

1. Take the respondent into custody and deliver him or her for evaluation to either the nearest appropriate licensed service provider or a licensed service provider designated by the court; and

2. If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

Otherwise, the petitioner must inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as is practicable. However, if the respondent has not been assessed within 90 days, the court must dismiss the case. ~~At the hearing initiated in accordance with s. 397.6811(1), the court shall hear all relevant testimony. The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the~~



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~~respondent meets the involuntary admission criteria of s. 397.675.~~

~~(1) Based on its determination, the court shall either dismiss the petition or immediately enter an order authorizing the involuntary assessment and stabilization of the respondent; or, if in the course of the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to injure himself or herself or another if allowed to remain at liberty, the court may initiate involuntary proceedings under the provisions of part I of chapter 394.~~

~~(2) If the court enters an order authorizing involuntary assessment and stabilization, the order shall include the court's findings with respect to the availability and appropriateness of the least restrictive alternatives and the need for the appointment of an attorney to represent the respondent, and may designate the specific licensed service provider to perform the involuntary assessment and stabilization of the respondent. The respondent may choose the licensed service provider to deliver the involuntary assessment where possible and appropriate.~~

~~(3) If the court finds it necessary, it may order the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order or, if none is specified, to the nearest appropriate licensed service provider for involuntary assessment.~~

~~(4) The order is valid only for the period specified in the order or, if a period is not specified, for 7 days after the order is signed.~~

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Section 35. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary treatment services.—

(1)(a) The respondent must be present at a hearing on a petition for involuntary treatment services~~,~~ unless the court finds that he or she knowingly, intelligently, and voluntarily waives his or her right to be present or, upon receiving proof of service and evaluating the circumstances of the case, that his or her presence is inconsistent with his or her best interests or is likely to be injurious to self or others. The court shall hear and review all relevant evidence, including testimony from individuals such as family members familiar with the respondent's prior history and how it relates to his or her current condition, and the ~~review of~~ results of the assessment completed by the qualified professional in connection with this chapter. The court may also order drug tests. Upon a finding of good cause, the court may permit all witnesses, including, but not limited to, medical professionals who are or have been involved with the respondent's treatment, to remotely attend and testify at the hearing under oath via audio-video teleconference. A witness intending to remotely attend and testify must provide the parties with all relevant documents by the close of business on the day before the hearing ~~the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian~~



~~advocate to act in behalf of the respondent throughout the proceedings~~.

(b) A respondent may not be involuntarily ordered into treatment under this chapter without a clinical assessment being performed, unless he or she is present in court and expressly waives the assessment. In nonemergency situations, if the respondent was not, or had previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it reasonably appears that the respondent qualifies for involuntary treatment services, the court shall issue an involuntary assessment and stabilization order to determine the appropriate level of treatment the respondent requires. Additionally, in cases where an assessment was attached to the petition, the respondent may request, or the court on its own motion may order, an independent assessment by a court-appointed or otherwise agreed upon qualified professional. If an assessment order is issued, it is valid for 90 days, and if the respondent is present or there is either proof of service or his or her location is known, the involuntary treatment hearing shall be continued for no more than 10 court working days. Otherwise, the petitioner must inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as is practicable. The assessment must occur before the new hearing date, and if there is evidence indicating that the respondent will not voluntarily appear at the forthcoming hearing or is a danger to self or others, the court may enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the date of the rescheduled hearing. However,



if after 90 days the respondent remains unassessed, the court shall dismiss the case.

(c)1. The respondent's assessment by a qualified professional must occur within 72 hours after his or her arrival at a licensed service provider unless the respondent shows signs of withdrawal or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until such issue is resolved but no later than the scheduled hearing date, absent a court-approved extension. If the respondent is a minor, such assessment must be initiated within the first 12 hours of the minor's admission to the facility. The service provider may also move to extend the 72 hours of observation by petitioning the court in writing for additional time. The service provider must furnish copies of such motion to all parties in accordance with applicable confidentiality requirements, and after a hearing, the court may grant additional time. If the court grants the service provider's petition, the service provider may continue to hold the respondent, and if the original or extended observation period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, the provider may hold the respondent until the next court working day.

2. No later than the ordinary close of business on the day before the hearing, the qualified professional shall transmit, in accordance with any applicable confidentiality requirements, his or her clinical assessment to the clerk of the court, who shall enter it into the court file. The report must contain a recommendation on the level of substance abuse treatment the



respondent requires, if any, and the relevant information on which the qualified professional's findings are based. This document must further note whether the respondent has any co-occurring mental health or other treatment needs. For adults subject to an involuntary assessment, the report's filing with the court satisfies s. 397.6758 if it also contains the respondent's admission and discharge information. The qualified professional's failure to include a treatment recommendation, much like a recommendation of no treatment, shall result in the petition's dismissal.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:

1. Without services, the respondent is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the respondent will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or

2. The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for



care and of making a rational decision regarding that need for care.

(3) ~~One of the qualified professionals who executed the involuntary services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The~~ Testimony in the hearing must be taken under oath, and the proceedings must be recorded. The respondent ~~patient~~ may refuse to testify at the hearing.

(4) If at any point during the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, meets the involuntary commitment provisions of part I of chapter 394, the court may initiate involuntary examination proceedings under such provisions.

(5)~~(4)~~ At the conclusion of the hearing the court shall either dismiss the petition or order the respondent to receive involuntary treatment services from his or her chosen licensed service provider if possible and appropriate. Any treatment order must include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

Section 36. Section 397.697, Florida Statutes, is amended to read:

397.697 Court determination; effect of court order for involuntary services.—

(1)(a) When the court finds that the conditions for



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involuntary treatment services have been proved by clear and convincing evidence, it may order the respondent to receive involuntary treatment services from a publicly funded licensed service provider for a period not to exceed 90 days. The court may also order a respondent to undergo treatment through a privately funded licensed service provider if the respondent has the ability to pay for the treatment, or if any person on the respondent's behalf voluntarily demonstrates a willingness and an ability to pay for the treatment. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary treatment services. When the conditions justifying involuntary treatment services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary treatment services are expected to exist after 90 days of treatment services, a renewal of the involuntary services order may be requested pursuant to s. 397.6975 before the end of the 90-day period.

(b) To qualify for involuntary outpatient treatment, an individual must be supported by a social worker or case manager of a licensed service provider, or a willing, able, and responsible individual appointed by the court who shall inform the court and parties if the respondent fails to comply with his or her outpatient program. In addition, unless the respondent has been involuntarily ordered into inpatient treatment under this chapter at least twice during the last 36 months, or demonstrates the ability to substantially comply with the



outpatient treatment while waiting for residential placement to become available, he or she must receive an assessment from a qualified professional or licensed physician expressly recommending outpatient services, such services must be available in the county in which the respondent is located, and it must appear likely that the respondent will follow a prescribed outpatient care plan.

(2) In all cases resulting in an order for involuntary treatment services, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require, including, but not limited to, monitoring compliance with treatment, changing the treatment modality, or initiating contempt of court proceedings for violating any valid order issued pursuant to this chapter. Hearings under this section may be set by motion of the parties or under the court's own authority, and the motion and notice of hearing for these ancillary proceedings, which include, but are not limited to, civil contempt, must be served in accordance with relevant court procedural rules. The court's requirements for notification of proposed release must be included in the original order.

(3) An involuntary treatment services order also authorizes the licensed service provider to require the individual to receive treatment services that will benefit him or her, including treatment services at any licensable service component of a licensed service provider.

(4) If the court orders involuntary treatment services, a copy of the order must be sent to the managing entity within 1 working day after it is received from the court. Documents may



be submitted electronically through ~~though~~ existing data systems, if applicable. The institute established under 1004.44, shall also receive and maintain copies of the involuntary assessment and treatment orders issued pursuant to ss. 397.68151, 397.6818 and 397.6957, the qualified professional assessments, the professional certificates, and the law enforcement officers' protective custody reports. The institute established under 1004.44, shall use such documents to prepare annual reports analyzing the data the documents contain, without including patients' personal identifying information, and the institute shall post such reports on its website and provide copies of the reports to the department, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each year.

Section 37. Section 397.6971, Florida Statutes, is amended to read:

397.6971 Early release from involuntary services.—

(1) At any time before the end of the 90-day involuntary treatment services period, or before the end of any extension granted pursuant to s. 397.6975, an individual receiving involuntary treatment services may be determined eligible for discharge to the most appropriate referral or disposition for the individual when any of the following apply:

(a) The individual no longer meets the criteria for involuntary admission and has given his or her informed consent to be transferred to voluntary treatment status.

(b) If the individual was admitted on the grounds of likelihood of infliction of physical harm upon himself or herself or others, such likelihood no longer exists.



(c) If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need:

1. Such inability no longer exists; or

2. It is evident that further treatment will not bring about further significant improvements in the individual's condition.

(d) The individual ~~is~~ no longer needs treatment ~~in need of~~ services.

(e) The director of the service provider determines that the individual is beyond the safe management capabilities of the provider.

(2) Whenever a qualified professional determines that an individual admitted for involuntary treatment services qualifies for early release under subsection (1), the service provider shall immediately discharge the individual and must notify all persons specified by the court in the original treatment order.

Section 38. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary treatment services period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary treatment services continues to meet the criteria for involuntary services in s. 397.68111 or s. 397.6957 ~~s. 397.693~~, a petition for renewal of the involuntary treatment services order must ~~may~~ be filed with the court ~~at least 10 days~~ before the expiration of the court-ordered services period. The petition may be filed by the service provider or by the person



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who filed the petition for the initial treatment order if the petition is accompanied by supporting documentation from the service provider. The court shall immediately schedule a hearing within 10 court working days to be held not more than 15 days after filing of the petition and~~.~~ the court shall provide the copy of the petition for renewal and the notice of the hearing to all parties and counsel to the proceeding. The hearing is conducted pursuant to ss. 397.6957 and 397.697 and must be held before the circuit court unless referred to a magistrate ~~s. 397.6957~~.

(2) If the court finds that the petition for renewal of the involuntary treatment services order should be granted, it may order the respondent to receive involuntary treatment services for a period not to exceed an additional 90 days. When the conditions justifying involuntary treatment services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary services continue to exist after an additional 90 days of service, a new petition requesting renewal of the involuntary treatment services order may be filed pursuant to this section.

~~(3) Within 1 court working day after the filing of a petition for continued involuntary services, the court shall appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel of such appointment. The office of criminal conflict and civil regional counsel shall represent the respondent until the petition is dismissed or the court order~~



~~expires or the respondent is discharged from involuntary services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.~~

~~(4) Hearings on petitions for continued involuntary services shall be before the circuit court. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.~~

~~(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.~~

~~(6) The same procedure shall be repeated before the expiration of each additional period of involuntary services.~~

~~(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.~~

Section 39. Section 397.6977, Florida Statutes, is amended to read:

397.6977 Disposition of individual upon completion of involuntary services.—

(1) At the conclusion of the 90-day period of court-ordered involuntary services, the respondent is automatically discharged unless a motion for renewal of the involuntary services order has been filed with the court pursuant to s. 397.6975.

(2) Discharge planning and procedures for any respondent's

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release from involuntary treatment services must include and document the respondent's needs, and actions to address such needs, for, at a minimum:

(a) Follow-up behavioral health appointments.

(b) Information on how to obtain prescribed medications.

(c) Information pertaining to available living arrangements and transportation.

(d) Referral to recovery support opportunities, including, but not limited to, connection to a peer specialist.

Section 40. Section 397.6811, Florida Statutes, is repealed.

Section 41. Section 397.6814, Florida Statutes, is repealed.

Section 42. Section 397.6815, Florida Statutes, is repealed.

Section 43. Section 397.6819, Florida Statutes, is repealed.

Section 44. Section 397.6821, Florida Statutes, is repealed.

Section 45. Section 397.6822, Florida Statutes, is repealed.

Section 46. Section 397.6978, Florida Statutes, is repealed.

Section 47. Subsection (2) of section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental



illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(a) Immediately after receipt of a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure, the department shall request all medical information relating to the defendant from the jail. The jail shall provide the department with all medical information relating to the defendant within 3 business days after receipt of the department's request or at the time the defendant enters the physical custody of the department, whichever is earlier.

(b) Within 60 days after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c)1. If the department determines at any time that a defendant will not or is unlikely to regain competency to proceed, the department shall, within 30 days after the determination, complete and submit a competency evaluation report to the circuit court to determine if the defendant meets the criteria for involuntary civil commitment under s. 394.467. A qualified professional, as defined in s. 394.455, must sign the competency evaluation report for the circuit court under penalty of perjury. A copy of the report shall be provided, at a minimum, to the court, state attorney, and counsel for the



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defendant before initiating any transfer of the defendant back to the committing jurisdiction.

2. For purposes of this paragraph, the term "competency evaluation report to the circuit court" means a report by the department regarding a defendant's incompetence to proceed in a criminal proceeding due to mental illness as set forth in this section. The report shall include, at a minimum, the following regarding the defendant:

a. A description of mental, emotional, and behavioral disturbances.

b. An explanation to support the opinion of incompetence to proceed.

c. The rationale to support why the defendant is unlikely to gain competence to proceed in the foreseeable future.

d. A clinical opinion regarding whether the defendant no longer meets the criteria for involuntary forensic commitment pursuant to this section.

e. A recommendation on whether the defendant meets the criteria for involuntary services pursuant to s. 394.467.

(d) ~~(c)~~ The defendant must be transported, in accordance with s. 916.107, to the committing court's jurisdiction within 7 days after ~~of~~ notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. A determination on the issue of competency must be made at a hearing within 30 days of the notification. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to



change or discontinue it. To ensure continuity of care, the referring mental health facility must transfer the patient with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician. Notwithstanding this paragraph, a defendant who meets the criteria for involuntary examination pursuant to s. 394.463 as determined by an independent clinical opinion shall appear remotely for the hearing. Court witnesses may appear remotely.

Section 48. Subsection (6) of section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs; reimbursement for petitions and orders.—

(6) Subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions and orders filed under ss. 394.459, 394.463, 394.467, and 394.917, ~~and 397.6814,~~ at the rate of $40 per petition or order. Such request for reimbursement shall be submitted in the form and manner prescribed by the Justice Administrative Commission pursuant to s. 28.35(2)(i).

Section 49. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—



(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455 ~~s. 394.455(49)~~.

Section 50. Paragraph (e) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

464.012 Licensure of advanced practice registered nurses; fees; controlled substance prescribing.—

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse may perform the following acts within his or her specialty:

(e) A psychiatric nurse, who meets the requirements in s. 394.455(37) ~~s. 394.455(36)~~, within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.

Section 51. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455 ~~s. 394.455(49)~~, without an involuntary placement proceeding as provided by law.

Section 52. Subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—



(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the ~~written~~ order of a physician for up to 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued ~~written~~ order of a physician who has determined that the emergency situation continues to present a danger to the safety of the client or others.

2. In a situation other than an emergency situation, the administrator or designee of the facility shall petition the court for an order authorizing necessary and essential treatment for the client.

a. If the client has been receiving psychotropic medication at the jail at the time of transfer to the forensic or civil



facility and lacks the capacity to make an informed decision regarding mental health treatment at the time of admission, the admitting physician shall order continued administration of psychotropic medication if, in the clinical judgment of the physician, abrupt cessation of that psychotropic medication could pose a risk to the health or safety of the client while a court order to medicate is pursued. The administrator or designee of the forensic or civil facility shall, within 5 days after a client's admission, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of a client with psychotropic medication. The jail physician shall provide a current psychotropic medication order at the time of transfer to the forensic or civil facility or upon request of the admitting physician after the client is evaluated.

b. The court order shall allow such treatment for up to 90 days after the date that the order was entered. Unless the court is notified in writing that the client has provided express and informed written consent or that the client has been discharged by the committing court, the administrator or designee of the facility shall, before the expiration of the initial 90-day order, petition the court for an order authorizing the continuation of treatment for an additional 90 days. This procedure shall be repeated until the client provides consent or is discharged by the committing court.

3. At the hearing on the issue of whether the court should enter an order authorizing treatment for which a client was



unable to or refused to give express and informed consent, the court shall determine by clear and convincing evidence that the client has mental illness, intellectual disability, or autism, that the treatment not consented to is essential to the care of the client, and that the treatment not consented to is not experimental and does not present an unreasonable risk of serious, hazardous, or irreversible side effects. In arriving at the substitute judgment decision, the court must consider at least the following factors:

a. The client's expressed preference regarding treatment;

b. The probability of adverse side effects;

c. The prognosis without treatment; and

d. The prognosis with treatment.

The hearing shall be as convenient to the client as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the client's condition. The court may appoint a general or special magistrate to preside at the hearing. The client or the client's guardian, and the representative, shall be provided with a copy of the petition and the date, time, and location of the hearing. The client has the right to have an attorney represent him or her at the hearing, and, if the client is indigent, the court shall appoint the office of the public defender to represent the client at the hearing. The client may testify or not, as he or she chooses, and has the right to cross-examine witnesses and may present his or her own witnesses.

(b) In addition to the provisions of paragraph (a), in the case of surgical procedures requiring the use of a general

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anesthetic or electroconvulsive treatment or nonpsychiatric medical procedures, and prior to performing the procedure, written permission shall be obtained from the client, if the client is legally competent, from the parent or guardian of a minor client, or from the guardian of an incompetent client. The administrator or designee of the forensic facility or a designated representative may, with the concurrence of the client's attending physician, authorize emergency surgical or nonpsychiatric medical treatment if such treatment is deemed lifesaving or for a situation threatening serious bodily harm to the client and permission of the client or the client's guardian could not be obtained before provision of the needed treatment.

Section 53. For the 2024-2025 fiscal year, the sum of $50,000,000 of recurring funds from the General Revenue Fund are provided to the Department of Children and Families to implement the provisions of this act.

Section 54. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.455, F.S.; conforming a cross-reference to changes made by the act; amending s. 394.4572, F.S.; providing an exception to background screening requirements for certain licensed physicians and nurses; amending s. 394.459, F.S.; specifying a



timeframe for recording restrictions in a patient's clinical file; requiring that such recorded restriction be immediately served on certain parties; conforming a provision to changes made by the act; amending s. 394.4598, F.S.; authorizing certain psychiatric nurses to consult with guardian advocates for purposes of obtaining consent for treatment; amending s. 394.4599, F.S.; revising written notice requirements relating to filing petitions for involuntary services; amending s. 394.461, F.S.; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case-in-chief; prohibiting the court from considering substantive information in the transfer evaluation; providing an exception; revising reporting requirements; amending s. 394.4615, F.S.; allowing a patient's legal custodian to authorize release of the patient's clinical records; conforming provisions to changes made by the act; amending s. 394.462, F.S.; authorizing a county to include alternative funding arrangements for transporting individuals to designated receiving facilities in the county's transportation plan; conforming provisions to changes made by the act; amending s. 394.4625, F.S.; revising requirements relating to voluntary admissions to a facility for examination and treatment; requiring certain treating psychiatric nurses to document specified information in a patient's clinical record



within a specified timeframe of his or her voluntary admission for mental health treatment; requiring clinical psychologists who make determinations of involuntary placement at certain mental health facilities to have specified clinical experience; authorizing certain psychiatric nurses to order emergency treatment for certain patients; conforming provisions to changes made by the act; amending s. 394.463, F.S.; authorizing, rather than requiring, law enforcement officers to take certain persons into custody for involuntary examinations; requiring a law enforcement officer to provide a parent or legal guardian of a minor being transported to certain facilities with specified facility information; providing an exception; requiring written reports by law enforcement officers to contain certain information;; requiring a certain institute to collect and analyze certain documents and use them to prepare annual reports; providing requirements for such reports; requiring the institute to post such reports on its website; providing a due date for the annual reports; requiring the department to post a specified report on its website; revising requirements for releasing a patient from a receiving facility; revising requirements for petitions for involuntary services; requiring the department and the Agency for Health Care Administration to analyze certain data, identify patterns and trends, and make recommendations to decrease avoidable admissions; authorizing



recommendations to be addressed in a specified manner; requiring the department to publish a specified report on its website and submit such report to the Governor and Legislature by a certain date; amending s. 394.4655, F.S.; defining the term "involuntary outpatient placement"; authorizing a specified court to order an individual to involuntary outpatient treatment; removing provisions relating to criteria, retention of a patient, and petition for involuntary outpatient services and court proceedings relating to involuntary outpatient services; amending s. 394.467, F.S.; providing definitions; revising requirements for ordering a person for involuntary services and treatment, petitions for involuntary service, appointment of counsel, and continuances of hearings, respectively; requiring clinical psychologists to have specified clinical experience in order to recommend involuntary services; authorizing certain psychiatric nurses to recommend involuntary services for mental health treatment; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary inpatient placement hearing; authorizing the court to permit witnesses to attend and testify remotely at the hearing through specified means; providing requirements for a witness to attend and testify remotely; requiring facilities to make certain clinical records available to a state attorney within a specified timeframe; specifying that such records remain confidential and may not be used for

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certain purposes; requiring the court to allow certain testimony from specified persons; revising the length of time a court may require a patient to receive services; requiring facilities to discharge patients when they no longer meet the criteria for involuntary inpatient treatment; prohibiting courts from ordering individuals with developmental disabilities to be involuntarily placed in a state treatment facility; requiring courts to refer such individuals, and authorizing courts to refer certain other individuals, to specified agencies for evaluation and services; providing requirements for service plan modifications, noncompliance with involuntary outpatient services, and discharge, respectively; revising requirements for the procedure for continued involuntary services and return to facilities, respectively; amending s. 394.468, F.S.; revising requirements for discharge planning and procedures; providing requirements for the discharge transition process; creating s. 394.4915, F.S.; establishing the Office of Children's Behavioral Health Ombudsman within the Department of Children and Families for a specified purpose; providing responsibilities of the office; requiring the department and managing entities to include specified information in a specified manner on their websites; amending ss. 394.495 and 394.496, F.S.; conforming provisions to changes made by the act; amending s. 394.499, F.S.; revising eligibility requirements for children's crisis stabilization

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unit/juvenile addictions receiving facility services; amending s. 394.875, F.S.; removing a limitation on the size of a crisis stabilization unit; removing a requirement for the department to implement a certain demonstration project; amending s. 394.9085, F.S.; conforming a cross-reference to changes made by the act; amending s. 397.305, F.S.; revising the purpose to include the most appropriate environment for substance abuse services; amending s. 397.311, F.S.; revising definitions; amending s. 397.401, F.S.; prohibiting certain service providers from exceeding their licensed capacity by more than a specified percentage or for more than a specified number of days; amending s. 397.4073, F.S.; providing an exception to background screening requirements for certain licensed physicians and nurses; amending s. 397.501, F.S.; revising notice requirements for the right to counsel; amending s. 397.581, F.S.; revising actions that constitute unlawful activities relating to assessment and treatment; providing penalties; amending s. 397.675, F.S.; revising the criteria for involuntary admissions for purposes of assessment and stabilization, and for involuntary treatment; amending s. 397.6751, F.S.; revising service provider responsibilities relating to involuntary admissions; amending s. 397.681, F.S.; revising where involuntary treatment petitions for substance abuse impaired persons may be filed; specifying requirements for the court to allow a waiver of the respondent’s right to



counsel relating to petitions for involuntary treatment; revising the circumstances under which courts are required to appoint counsel for respondents without regard to respondents' wishes; renumbering and amending s. 397.693, F.S.; revising the circumstances under which a person may be the subject of court-ordered involuntary treatment; renumbering and amending s. 397.695, F.S.; authorizing the court or clerk of the court to waive or prohibit any service of process fees for petitioners determined to be indigent; renumbering and amending s. 397.6951, F.S.; revising the information required to be included in a petition for involuntary treatment services; authorizing a petitioner to include a certificate or report of a qualified professional with such petition; requiring such certificate or report to contain certain information; requiring that certain additional information be included if an emergency exists; renumbering and amending s. 397.6955, F.S.; revising when the office of criminal conflict and civil regional counsel represents a person in the filing of a petition for involuntary services and when a hearing must be held on such petition; requiring a law enforcement agency to effect service for initial treatment hearings; providing an exception; amending s. 397.6818, F.S.; authorizing the court to take certain actions and issue certain orders regarding a respondent's involuntary assessment if emergency circumstances exist; providing a specified timeframe

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for taking such actions; amending s. 397.6957, F.S.; expanding the exemption from the requirement that a respondent be present at a hearing on a petition for involuntary treatment services; authorizing the court to order drug tests and to permit witnesses to attend and testify remotely at the hearing through certain means; removing a provision requiring the court to appoint a guardian advocate under certain circumstances; prohibiting a respondent from being involuntarily ordered into treatment unless certain requirements are met; providing requirements relating to involuntary assessment and stabilization orders; providing requirements relating to involuntary treatment hearings; requiring that the assessment of a respondent occur before a specified time unless certain requirements are met; authorizing service providers to petition the court in writing for an extension of the observation period; providing service requirements for such petitions; authorizing the service provider to continue to hold the respondent if the court grants the petition; requiring a qualified professional to transmit his or her report to the clerk of the court within a specified timeframe; requiring the clerk of the court to enter the report into the court file; providing requirements for the report; providing that the report's filing satisfies the requirements for release of certain individuals if it contains admission and discharge information; providing for the petition's dismissal under certain



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circumstances; authorizing the court to order certain persons to take a respondent into custody and transport him or her to or from certain service providers and the court; revising the petitioner's burden of proof in the hearing; authorizing the court to initiate involuntary proceedings and have the respondent evaluated by the Agency for Persons with Disabilities under certain circumstances; requiring that, if a treatment order is issued, it must include certain findings; amending s. 397.697, F.S.; requiring that an individual meet certain requirements to qualify for involuntary outpatient treatment; revising the jurisdiction of the court with respect to certain orders entered in a case; specifying that certain hearings may be set by either the motion of a party or under the court's own authority; requiring a certain institute to receive and maintain copies of certain documents and use them to prepare annual reports; providing requirements for such reports; requiring the institute to post such reports on its website; amending s. 397.6971, F.S.; conforming provisions to changes made by the act; amending s. 397.6975, F.S.; authorizing certain entities to file a petition for renewal of an involuntary treatment services order; revising the timeframe during which the court is required to schedule a hearing; amending s. 397.6977, F.S.; providing requirements for discharge planning and procedures for a respondent's release from involuntary treatment services; repealing ss.



397.6811, 397.6814, 397.6815, 397.6819, 397.6821, 397.6822, and 397.6978, F.S., relating to involuntary assessment and stabilization and the appointment of guardian advocates, respectively; amending s. 916.13, F.S.; requiring the Department of Children and Families to complete and submit a competency evaluation report to the circuit court to determine if a defendant adjudicated incompetent to proceed meets the criteria for involuntary civil commitment if it is determined that the defendant will not or is unlikely to regain competency; defining the term "competency evaluation report to the circuit court"; requiring a qualified professional to sign such report under penalty of perjury; providing requirements for such report; authorizing a defendant who meets the criteria for involuntary examination and court witnesses to appear remotely for a hearing; amending ss. 40.29, 409.972, 464.012, 744.2007, and 916.107,F.S.; conforming provisions to changes made by the act; providing an appropriation; providing an effective date.

By Senator Grall

29-01321B-24 20241784__

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.455, F.S.; conforming a cross-reference; conforming a provision to changes made by the act; amending s. 394.4572, F.S.; providing an exception to background screening requirements for certain licensed physicians and nurses; amending s. 394.459, F.S.; conforming a provision to changes made by the act; specifying a timeframe for recording restrictions in a patient's clinical file; amending s. 394.4599, F.S.; revising written notice requirements relating to filing petitions for involuntary services; amending s. 394.461, F.S.; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; prohibiting the court from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing; requiring the Department of Children and Families to post a specified report on its website; deleting requirements to submit the report to specified parties; amending s 394.4615, F.S.; conforming cross-references to changes made by the act; amending s. 394.462, F.S.; conforming cross-references; amending s. 394.4625, F.S.; revising requirements relating to voluntary admissions to a facility for examination and treatment; amending s. 394.463, F.S.; authorizing, rather than requiring, law enforcement officers to take certain persons into

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custody for involuntary examinations; requiring written reports by a law enforcement officer to contain certain information; revising the types of documents that the department is required to receive and maintain and that are considered part of the clinical record; requiring the department to post a specified report on its website by a specified date; revising requirements for releasing a patient from a receiving facility; revising when the examination period begins for a patient at a receiving facility; revising requirements for petitions for involuntary services; requiring the department and the Agency for Health Care Administration to analyze certain data, identify patterns and trends, and make recommendations to decrease avoidable admissions; authorizing recommendations to be addressed in a specified manner; requiring the department to publish a specified report on its website by a certain date; making technical changes; conforming provisions to changes made by the act; amending s. 394.4655, F.S.; defining the terms "court", "criminal county court", and "involuntary outpatient placement"; authorizing a criminal county court to order an individual to involuntary outpatient treatment; deleting provisions relating to involuntary outpatient services; amending s. 394.467, F.S.; defining terms; revising the criteria for ordering a person for involuntary inpatient placement; providing that a patient may be recommended and retained for involuntary services; requiring recommendations for

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services be supported by the opinions of certain medical professionals within a specified timeframe; revising who may file a petition for involuntary services; requiring such petitions to be filed in the county where the patient is located; providing criteria for what must be in a petition for involuntary services; requiring a service provider to provide a treatment plan if the patient meets the criteria for involuntary services; requiring copies of such petitions be given to specified individuals; requiring the court to appoint counsel for the patient, if the patient meets certain criteria; revising provisions relating to continuances of hearings; revising requirements for hearings on involuntary services; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary inpatient placement hearing; requiring facilities to make certain clinical records available to a state attorney within a specified timeframe; specifying that such records remain confidential and may not be used for certain purposes; requiring the court to allow testimony from certain individuals; requiring the court to consider testimony and evidence regarding a patient's competence to consent to services and treatment; requiring the court to appoint a guardian advocate if the patient is found to be incompetent; authorizing the court to order a patient to involuntary inpatient or outpatient services, depending on the services

available to the patient in his or her community; requiring service providers to document efforts taken to secure appropriate services for the patient; prohibiting courts from ordering individuals with developmental disabilities to be involuntarily placed in a state treatment facility; conforming provisions to changes made by the act; amending s. 394.468, F.S.; revising requirements for discharge planning; amending ss. 394.495 and 394.496, F.S.; conforming provisions to changes made by the act; amending s. 394.499, F.S.; revising eligibility requirements for children's crisis stabilization unit/juvenile addictions receiving facility services; amending s. 394.875, F.S.; conforming provisions to changes made by the act; deleting a limitation on the size of a crisis stabilization unit; deleting a requirement for the department to implement a certain demonstration project; amending s. 394.9085, F.S.; conforming a cross-reference; amending s. 397.305, F.S.; revising the purpose of ch. 397, F.S.; amending s. 397.311, F.S.; revising and defining terms; amending s. 397.401, F.S.; prohibiting certain service providers from exceeding their licensed capacity by more than a specified percentage or for more than a specified number of days; amending s. 397.4073, F.S.; providing an exception to background screening requirements for certain licensed physicians and nurses; amending s. 397.501, F.S.; revising notice requirements for the right to counsel; amending s. 397.581, F.S.; revising

actions that constitute unlawful activities relating to assessment and treatment; amending s. 397.675, F.S.; revising the criteria for involuntary admissions for purposes of assessment and stabilization, and for involuntary treatment; amending s. 397.681, F.S.; revising where involuntary treatment petitions for substance abuse impaired persons must be filed; revising the portion of such proceedings over which a general or special magistrate may preside; providing an exception to a respondent's right to counsel relating to petitions for involuntary treatment; revising the circumstances under which courts are required to appoint counsel for respondents without regard to respondents' wishes; conforming provisions to changes made by the act; amending s. 397.6751, F.S.; revising service provider responsibilities relating to involuntary admissions; amending s. 397.6818, F.S.; revising provisions relating to court determinations for petitions for involuntary assessment and stabilization; renumbering and amending s. 397.693, F.S.; revising the circumstances under which a person may be the subject of court-ordered involuntary treatment; renumbering and amending s. 397.695, F.S.; authorizing the court or a law enforcement agency to waive or prohibit any service of process fees for petitioners determined to be indigent; renumbering and amending s. 397.6951, F.S.; revising the information required to be included in a petition for involuntary treatment services;

authorizing a petitioner to include a certificate or report of a qualified professional with such petition; requiring such certificate or report to contain certain information; requiring that certain additional information be included if an emergency exists; renumbering and amending s. 397.6955, F.S.; revising when the office of criminal conflict and civil regional counsel represents a person; revising when a hearing must be held on a petition for involuntary treatment; requiring law enforcement agencies to effect service for initial treatment hearings; providing an exception; conforming provisions to changes made by the act; amending s. 397.6957, F.S.; expanding the exemption from the requirement that a respondent be present at a hearing on a petition for involuntary treatment services; requiring the court to hear testimony from family members familiar with the respondent's history; authorizing the court to order drug tests and to permit witnesses to attend and testify remotely at the hearing through certain means; deleting a provision requiring the court to appoint a guardian advocate under certain circumstances; prohibiting a respondent from being involuntarily ordered into treatment unless certain requirements are met; providing requirements relating to involuntary assessment and stabilization orders; providing requirements relating to involuntary treatment hearings; requiring that the assessment of a respondent occur within a specified timeframe;

providing an exception; authorizing service providers to petition the court in writing for an extension of the observation period; providing service requirements for such petitions; authorizing the service provider to continue to hold the respondent if the court grants the petition; requiring a qualified professional to transmit his or her report to the clerk of the court within a specified timeframe; requiring the clerk of the court to enter the report into the court file; providing requirements for the report; providing that the report's filing satisfies the requirements for release of certain individuals if it contains admission and discharge information; providing for the petition's dismissal under certain circumstances; authorizing the court to initiate involuntary proceedings and have the respondent evaluated by the under certain circumstances; requiring that a treatment order, if issued, must include certain findings; amending s. 397.6975, F.S.; authorizing certain entities to file a petition for renewal of an involuntary treatment services order; revising the timeframe during which the court is required to schedule a hearing; conforming provisions to changes made by the act; amending s. 397.6977, F.S.; providing that discharge planning and procedures for a respondent's release from involuntary treatment services address minimum requirements; amending ss. 409.972, 464.012, and 744.2007, F.S.; conforming provisions to changes made by the act; amending s.

916.13, F.S.; requiring the Department of Children and Families to complete and submit a competency evaluation report to the circuit court to determine if a defendant adjudicated incompetent to proceed meets the criteria for involuntary civil commitment if it is determined that the defendant will not or is unlikely to regain competency; requiring a qualified professional to sign such report under penalty of perjury; defining the term "competency evaluation report to the circuit court"; providing requirements for such report; requiring a defendant who meets the criteria for involuntary examination and court witnesses to appear remotely for hearing; conforming provisions to changes made by the act; repealing s. 397.6811, F.S., relating to involuntary assessment and stabilization; repealing s. 397.6814, F.S., relating to petitions for involuntary assessment and stabilization; repealing s. 397.6815, F.S., relating to involuntary assessment and stabilization procedures; repealing s. 397.6819, F.S., relating to the responsibilities of licensed service providers with regard to involuntary assessment and stabilization; repealing s. 397.6821, F.S., relating to extensions of time for completion of involuntary assessment and stabilization; repealing s. 397.6822, F.S., relating to the disposition of individuals after involuntary assessment; repealing s. 397.6978, F.S., relating to the appointment of guardian advocates; providing an effective date.

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

Section 1. Subsection (23) of s. 394.455, Florida Statutes, is amended, to read:

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

(23) "Involuntary examination" means an examination performed under s. 394.463, s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811~~ to determine whether a person qualifies for involuntary services.

Section 2. Paragraph (e) is added to subsection (1) of section 394.4572, Florida Statutes, to read:

394.4572 Screening of mental health personnel.—

(1)

(e) Licensed physicians and nurses who require background screening by Department of Health at initial licensure and renewal of licensure are not subject to background screening pursuant to this section if they are providing a service that is within their scope of licensed practice.

Section 3. Paragraph (d) of subsection (3) and paragraph (d) of subsection (5) of section 394.459, Florida Statutes, are amended to read:

394.459 Rights of patients.—

(3) RIGHT TO EXPRESS AND INFORMED PATIENT CONSENT.—

(d) The administrator of a receiving or treatment facility may, upon the recommendation of the patient's attending physician, authorize emergency medical treatment, including a surgical procedure, if such treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient,

and permission of the patient or the patient's guardian or guardian advocate cannot be obtained.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(d) If a patient's right to communicate with outside persons; receive, send, or mail sealed, unopened correspondence; or receive visitors is restricted by the facility, a qualified professional must record the restriction and its underlying reasons in the patient's clinical file within 24 hours, and this document must immediately ~~written notice of such restriction and the reasons for the restriction shall~~ be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative. ~~A qualified professional must document any restriction within 24 hours, and such restriction shall be recorded on the patient's clinical record with the reasons therefor.~~ The restriction of a patient's right to communicate or to receive visitors shall be reviewed at least every 3 days. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (e).

Section 4. Paragraph (d) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(d) The written notice of the filing of the petition for involuntary services for an individual being held must contain the following:

1. Notice that the petition for:

a. Involuntary services ~~inpatient treatment~~ pursuant to s.

394.467 has been filed with the circuit court and the address of such court ~~in the county in which the individual is hospitalized and the address of such court~~; or

b. Involuntary outpatient services pursuant to s. 394.4655 has been filed with the criminal county court, as defined in s. 394.4655(1)~~, or the circuit court, as applicable, in the county in which the individual is hospitalized and the address of such court~~.

2. Notice that the office of the public defender has been appointed to represent the individual in the proceeding, if the individual is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify in support of continued detention.

4. Notice that the individual, the individual's guardian, guardian advocate, health care surrogate or proxy, or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the individual.

5. Notice that the individual is entitled to an independent expert examination and, if the individual cannot afford such an examination, that the court will provide for one.

Section 5. Subsection (2) and paragraph (d) of subsection (4) of section 394.461, Florida Statutes, are amended to read:

394.461 Designation of receiving and treatment facilities and receiving systems.—The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designation for failure to comply with this part and rules adopted under

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this part. The department may issue a conditional designation for up to 60 days to allow the implementation of corrective measures. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient shall not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before the close of the state's case in chief in a ~~court~~ hearing for involuntary placement ~~in a state treatment facility~~, the state may establish that the transfer evaluation was performed and the document properly executed by providing the court with a copy of the transfer evaluation. The court may not ~~shall receive and~~ consider the substantive information ~~documented~~ in the transfer evaluation unless the evaluator testifies at the hearing. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

(4) REPORTING REQUIREMENTS.—

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report shall include individual facilities' data, as well as statewide totals. The report shall be posted on the department's website ~~submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~.

Section 6. Section 394.462, Florida Statutes, is amended to

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read:

394.462 Transportation.—A transportation plan shall be developed and implemented by each county in collaboration with the managing entity in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the counties shall notify the managing entity and provide it with a copy of the agreement. The transportation plan shall describe methods of transport to a facility within the designated receiving system for individuals subject to involuntary examination under s. 394.463 or involuntary admission under s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811,~~ and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate. The plan shall comply with the transportation provisions of this section and ss. 397.6772, 397.6795, ~~397.6822,~~ and 397.697.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the appropriate facility within the designated receiving system pursuant to a transportation plan.

(b)1. The designated law enforcement agency may decline to

transport the person to a receiving facility only if:

a. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2. The entity providing transportation may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor, if the person receiving the transportation has applicable coverage.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(c) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(d) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of

patients.

(e) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination pursuant to s. 394.463, the law enforcement officer shall transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan. Persons who meet the statutory guidelines for involuntary admission pursuant to s. 397.675 may also be transported by law enforcement officers to the extent resources are available and as otherwise provided by law. Such persons shall be transported to an appropriate facility within the designated receiving system pursuant to a transportation plan.

(h) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this

part, such person must first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan. The receiving facility shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide examination and treatment to the person where he or she is held.

(i) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(k) The appropriate facility within the designated receiving system pursuant to a transportation plan must accept persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, for involuntary examination pursuant to s. 394.463.

(l) The appropriate facility within the designated receiving system pursuant to a transportation plan must provide persons brought by law enforcement officers, or an emergency

medical transport service or a private transport company authorized by the county, pursuant to s. 397.675, a basic screening or triage sufficient to refer the person to the appropriate services.

(m) Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that reflects a single set of protocols for the safe and secure transportation and transfer of custody of the person. Each law enforcement agency shall provide a copy of the protocols to the managing entity.

(n) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(o) This section may not be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how the hospitalized patient will be transported to, from, and between facilities in a safe and dignified manner.

(b) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(c) A company that contracts with one or more counties to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(d) County or municipal law enforcement and correctional personnel and equipment may not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual at the appropriate receiving or treatment facility.

Section 7. Subsection (3) of section 394.4615, Florida Statutes, is amended to read:

394.4615 Clinical records; confidentiality.—

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe

according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat. When such communication has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655 or s. 394.467, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider under s. 394.467, ~~identified in s. 394.4655(7)(b)2.,~~ in accordance with state and federal law.

Section 8. Paragraph (a) of subsection (1) of section 394.4625, Florida Statutes, is amended to read:

394.4625 Voluntary admissions.—

(1) AUTHORITY TO RECEIVE PATIENTS.—

(a) A facility may receive for observation, diagnosis, or treatment any adult ~~person 18 years of age or older~~ who applies

by express and informed consent for admission or any minor ~~person age 17 or younger~~ whose parent or legal guardian applies for admission. Such person may be admitted to the facility if found to show evidence of mental illness and to be suitable for treatment, and:~~,~~

1. If the person is an adult, is found to be competent to provide express and informed consent; or

2. If the person is a minor, the parent or legal guardian provides express and informed consent and the facility performs~~,~~ ~~and to be suitable for treatment, such person 18 years of age or older may be admitted to the facility. A person age 17 or younger may be admitted only after~~ a clinical review to verify the voluntariness of the minor's assent.

Section 9. Subsection (1), paragraphs (a) and (e) through (h) of subsection (2), and subsection (4) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of

substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until

the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may ~~shall~~ take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this section ~~subparagraph~~ shall restrain the person in the least restrictive manner available and appropriate under the circumstances. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health

counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody and containing all emergency contact information required under subparagraph 2. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(e) The department shall receive and maintain ~~the~~ copies of ex parte orders, involuntary ~~outpatient~~ services orders issued pursuant to ss. 394.4655 and 394.467 ~~s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467~~, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without including patients' personal identifying information ~~identifying patients~~, and the department shall post the reports on its website and provide copies of reports ~~to the department~~, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives by November 30 of each year.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient

may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, ~~or~~ a clinical psychologist, or, if the receiving facility is owned or operated by a hospital, health system, or nationally accredited community mental health center, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. ~~A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.~~ The release may be approved through telehealth.

(g) The examination period must be for up to 72 hours and begins when a patient arrives at the receiving facility. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary services shall be filed in the circuit court ~~if inpatient treatment is deemed necessary~~ or with the criminal county court, as described in s. 394.4655 ~~defined in s. 394.4655(1)~~, as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. The petition ~~When a petition is to be filed for involuntary outpatient placement, it~~ shall be filed by one of the petitioners specified in s. 394.4655(4)(a). ~~A petition for involuntary inpatient placement shall be filed by the facility administrator~~, and the court shall dismiss an untimely filed petition. If a patient's 72-hour examination period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, and the receiving facility:

a. Intends to file a petition for involuntary services, such patient may be held at the ~~a receiving~~ facility through the next working day thereafter and the ~~such~~ petition ~~for involuntary services~~ must be filed no later than such date. If the ~~receiving~~ facility fails to file the ~~a~~ petition by ~~for involuntary services at~~ the ordinary close of business on the next working day, the patient shall be released from the receiving facility following approval pursuant to paragraph (f).

b. Does not intend to file a petition for involuntary services, the ~~a receiving~~ facility may postpone release of a patient until the next working day thereafter only if a qualified professional documents that adequate discharge planning and procedures in accordance with s. 394.468, and approval pursuant to paragraph (f), are not possible until the

next working day.

(h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be examined by a facility within the examination period specified in paragraph (g). The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary ~~outpatient~~ services pursuant to s. 394.4655 ~~s. 394.4655(2)~~ or s. 394.467 ~~involuntary inpatient placement pursuant to s. 394.467(1)~~, the patient may be offered voluntary outpatient or inpatient services ~~or placement~~, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary ~~inpatient~~ services ~~or involuntary outpatient placement~~ must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. 395.1041(3)(c) have been met.

(4) DATA ANALYSIS.—

(a) Using data collected under paragraph (2)(a) and s. 1006.07(10), the department shall, at a minimum, analyze data on both the initiation of involuntary examinations of children and

the initiation of involuntary examinations of students who are removed from a school; identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student; study root causes for such patterns, trends, or repeated involuntary examinations; and make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations.

(b) The department and the Agency for Health Care Administration shall analyze service data collected on individuals who, as defined by the department and the agency, are high utilizers of crisis stabilization services provided in designated receiving facilities, and shall, at a minimum, identify any patterns or trends and make recommendations to decrease avoidable admissions. Recommendations may be addressed in the department's contracts with the behavioral health managing entities and in the agency's contracts with the Medicaid managed medical assistance plans.

(c) The department shall publish ~~submit~~ a report on its findings and recommendations on its website and submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1 of each odd-numbered year.

Section 10. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services.—

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

(a) "Court" means a circuit court or a criminal county court.

(b) "Criminal county court" means a county court exercising

its original jurisdiction in a misdemeanor case under s. 34.01.

(c) "Involuntary outpatient placement" means involuntary outpatient services as defined in s. 394.476.

(2) INVOLUNTARY PLACEMENT.—A criminal county court may order an individual to involuntary outpatient placement under s. 394.467. ~~CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES.—A person may be ordered to involuntary outpatient services upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria:~~

~~(a) The person is 18 years of age or older.~~

~~(b) The person has a mental illness.~~

~~(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~

~~(d) The person has a history of lack of compliance with treatment for mental illness.~~

~~(e) The person has:~~

~~1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or~~

~~2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months.~~

~~(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment~~

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~~after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary.~~

~~(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).~~

~~(h) It is likely that the person will benefit from involuntary outpatient services.~~

~~(i) All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.~~

~~(3) INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. A patient who is being recommended for involuntary outpatient services by the administrator of the facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3~~

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~~years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.~~

~~2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services. Before filing a petition for involuntary outpatient services, the administrator of the facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.~~

~~3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely~~

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~~level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services, the administrator of the facility may, before the expiration of the period during which the facility is authorized to retain the patient, recommend involuntary outpatient services. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical~~

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~~psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3 years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate, and the certificate must be made a part of the patient's clinical record.~~

~~(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient services certificate and a copy of the state mental health discharge form to the managing entity in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services must be filed in the county where the patient will be residing.~~

~~2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before the order for involuntary outpatient services and must, before filing a petition for involuntary outpatient services, certify to the court whether the services recommended in the patient's discharge plan are available and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs~~

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~~identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.~~

~~3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(4) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a) A petition for involuntary outpatient services may be filed by:~~

~~1. The administrator of a receiving facility; or~~

~~2. The administrator of a treatment facility.~~

~~(b) Each required criterion for involuntary outpatient services must be alleged and substantiated in the petition for involuntary outpatient services. A copy of the certificate recommending involuntary outpatient services completed by a qualified professional specified in subsection (3) must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed plan are available. If the necessary services are not available, the petition may not be filed. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to~~

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~~obtain the requested services.~~

~~(c) The petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.~~

~~(5) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services. An attorney who represents the patient must be provided access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(6) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.~~

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~~(7) HEARING ON INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. The court shall hold the hearing on involuntary outpatient services within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must be held in the county where the petition is filed, must be as convenient to the patient as is consistent with orderly procedure, and must be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.~~

~~2. The court may appoint a magistrate to preside at the hearing. One of the professionals who executed the involuntary outpatient services certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under~~

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~~oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.~~

~~(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services pursuant to subsection (2), the court shall issue an order for involuntary outpatient services. The court order shall be for a period of up to 90 days. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services when the order expires or any time the patient no longer meets the criteria for involuntary placement. Upon discharge, the service provider shall send a certificate of discharge to the court.~~

~~2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court. The order may be submitted electronically through existing data systems. After the order for involuntary services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's~~

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~~guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~3. If, in the clinical judgment of a physician, the patient has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the~~

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~~court that the person does not meet the criteria for involuntary outpatient services under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are governed by chapter 397.~~

~~(d) At the hearing on involuntary outpatient services, the court shall consider testimony and evidence regarding the patient's competence to consent to services. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.~~

~~(c) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychologist or a clinical social worker.~~

~~(8) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES.~~

~~(a)1. If the person continues to meet the criteria for involuntary outpatient services, the service provider shall, at~~

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~~least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the court that issued the order for involuntary outpatient services a petition for continued involuntary outpatient services. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.~~

~~2. The existing involuntary outpatient services order remains in effect until disposition on the petition for continued involuntary outpatient services.~~

~~3. A certificate shall be attached to the petition which includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services, and an individualized plan of continued treatment.~~

~~4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.~~

~~(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The~~

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

~~public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(c) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7), except that the time period included in paragraph (2)(c) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.~~

~~(d) Notice of the hearing must be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient services without a court hearing.~~

~~(e) The same procedure must be repeated before the expiration of each additional period the patient is placed in treatment.~~

~~(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.~~

Section 11. Section 394.467, Florida Statutes, is amended

to read:

(Substantial rewording of section. See s. 394.467, F.S., for present text.)

394.467 Involuntary services.—

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

(a) "Court" means a circuit court.

(b) "Involuntary inpatient placement" means services provided on an inpatient basis to a person 18 years of age or older who does not voluntarily consent to services under this chapter, or a minor who does not voluntarily assent to services.

(c) "Involuntary outpatient services" means services provided on an outpatient basis to a person who does not voluntarily consent to services under this chapter.

(2) CRITERIA FOR INVOLUNTARY SERVICE.—A person may be ordered to involuntary services upon a finding of the court, by clear and convincing evidence, that the person meets the following criteria:

(a) The person has a mental illness and because of that mental illness:

1.a. Is unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services or voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of treatment; or

b. Is unable to determine for himself or herself whether services or inpatient placement is necessary; and

2.a. Is unlikely to survive safely in the community without supervision, based on clinical determination; or

b. Is incapable of surviving alone or with the help of

willing, able, and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to the person's well-being; or

c. Without treatment, there is a substantial likelihood that in the near future the person will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm;

(b) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services to prevent a relapse or deterioration of his or her mental health which would likely result in serious bodily harm to himself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1);

(c) The person has a history of lack of compliance with treatment for mental illness;

(d) It is likely that the person will benefit from involuntary services; and

(e) All available less restrictive treatment alternatives that would offer an opportunity for improvement of the person's condition have been deemed inappropriate or unavailable.

(3) RECOMMENDATION FOR INVOLUNTARY SERVICES AND TREATMENT.—A patient may be recommended for involuntary inpatient placement, involuntary outpatient services, or a combination of both.

(a) A patient may be retained by a facility for involuntary services upon the recommendation of the administrator of the facility where the patient has been examined and after adherence

to the notice and hearing procedures provided in s. 394.4599. However, if a patient who is being recommended for only involuntary outpatient services has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services.

(b) The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary services are met.

(c) If a psychiatrist or a clinical psychologist is not available to provide a second opinion, the administrator shall certify that a psychiatrist or a clinical psychologist is not available, and the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness or by a psychiatric nurse. If the patient is being recommended for involuntary outpatient services only, the second opinion may also be provided by a physician assistant who has at least 3 years' experience and is supervised by a licensed physician or a psychiatrist, or a clinical social worker.

(d) Any opinion authorized in this subsection may be conducted through a face-to-face examination, in person, or by electronic means. Recommendations for involuntary services must be entered on an involuntary services certificate, which shall be made a part of the patient's clinical record. The certificate must either authorize the facility to retain the patient pending completion of a hearing or authorize the facility to retain the

patient pending transfer to a treatment facility or completion of a hearing.

(4) PETITION FOR INVOLUNTARY SERVICES.—

(a) A petition for involuntary services may be filed by:

1. The administrator of a receiving facility; or

2. The administrator of a treatment facility.

(b) A petition for involuntary inpatient placement, or inpatient placement followed by outpatient services, must be filed in the court in the county where the patient is located.

(c) A petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside.

(d)1. The petitioner must state in the petition:

a. Whether the petitioner is recommending inpatient placement, outpatient services, or both;

b. The length of time recommended for each type of involuntary services; and

c. The reasons for the recommendation.

2. If recommending involuntary outpatient services, or a combination of involuntary inpatient placement and outpatient services, the petitioner must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment

relationship.

3. If recommending an immediate order to involuntary outpatient services, the service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested service.

(e) Each required criterion for the recommended involuntary services must be alleged and substantiated in the petition. A

copy of the certificate recommending involuntary services completed by a qualified professional specified in subsection (3) and, if applicable, a copy of the proposed treatment plan must be attached to the petition.

(f) When the petition has been filed, the clerk of the court shall provide copies of the petition and, if applicable, the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.

(5) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel or ineligible. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary services. Any attorney who represents the patient shall be provided access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(6) CONTINUANCE OF HEARING.—The patient and the state are independently entitled to at least one continuance of the hearing. The patient's continuance may be for a period of up to 4 weeks and requires the concurrence of the patient's counsel. The state's continuance may be for a period of up to 5 court

working days and requires a showing of good cause and due diligence by the state before requesting the continuance. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not warrant a continuance.

(7) HEARING ON INVOLUNTARY SERVICES.—

(a)1. The court shall hold a hearing on the involuntary services petition within 5 court working days after the filing of the petition, unless a continuance is granted.

2. The court shall hold any hearing on involuntary outpatient services in the county where the petition is filed. A hearing on involuntary inpatient placement, or a combination or involuntary inpatient placement and involuntary outpatient services, must be held in the county or the facility, as appropriate, where the patient is located, except for good cause documented in the court file.

3. A hearing on involuntary services must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in a physical setting not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, or the patient knowingly, intelligently, and voluntarily waives his or her right to be present, and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. The facility shall make the respondent's clinical records available

to the state attorney and the respondent's attorney so that the state can evaluate and prepare its case. However, these records shall remain confidential, and the state attorney may not use any record obtained under this part for criminal investigation or prosecution purposes, or for any purpose other than the patient's civil commitment under this chapter.

(b) At the hearing, the court shall consider testimony and evidence regarding the patient's competence to consent to services and treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(8) ORDERS OF THE COURT.—

(a)1. If the court concludes that the patient meets the criteria for involuntary services, the court may order a patient to involuntary inpatient placement, involuntary outpatient services, or a combination of involuntary services depending on the criteria met and which type of involuntary services best meet the needs of the patient. However, if the court orders the patient to involuntary outpatient services, the court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court.

2. The order must specify the nature and extent of the patient's mental illness.

3.a. An order for only involuntary outpatient services shall be for a period of up to 90 days.

b. An order for involuntary inpatient placement, or a combination of inpatient placement and outpatient services, may be up to 6 months.

4. An order for a combination of involuntary services must specify the length of time the patient shall be ordered for involuntary inpatient placement and involuntary outpatient services.

5. The order of the court and the patient's treatment plan must be made part of the patient's clinical record.

(b) If the court orders a patient into involuntary inpatient placement, the court may order that the patient be transferred to a treatment facility, or if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate facility, or that the patient receive services on an involuntary basis. The court may not order an individual with a developmental disability as defined in s. 393.063, a traumatic brain injury, or dementia who lacks a co-occurring mental illness to be involuntarily placed in a state treatment facility.

(c) If at any time before the conclusion of a hearing on involuntary services, it appears to the court that the patient instead meets the criteria for involuntary admission or treatment pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment pursuant to s.

397.675. Thereafter, all proceedings are governed by chapter 397.

(d) The administrator of the petitioning facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services or the administrator of a treatment facility if the patient is ordered for involuntary inpatient placement. The documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychiatric nurse, a clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied by adequate orders and documentation.

(9) TREATMENT PLAN MODIFICATION.—After the order for involuntary outpatient services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(10) NONCOMPLIANCE WITH INVOLUNTARY OUTPATIENT SERVICES.—If, in the clinical judgment of a physician, a patient receiving

involuntary outpatient services has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement under this section, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(11) PROCEDURE FOR CONTINUED INVOLUNTARY SERVICES.—

(a) A petition for continued involuntary services shall be filed if the patient continues to meets the criteria for involuntary services.

(b)1. If a patient receiving involuntary outpatient services continues to meet the criteria for involuntary outpatient services, the service provider shall file in the court that issued the order for involuntary outpatient services

a petition for continued involuntary outpatient services.

2. If the patient in involuntary inpatient placement continues to meet the criteria for involuntary inpatient placement and is being treated at a treatment facility, the administrator shall, before the expiration of the period the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement.

3. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

4. The existing involuntary services order shall remain in effect until disposition on the petition for continued involuntary services.

(c) A certificate for continued involuntary services must be attached to the petition and shall include a statement from the patient's physician, psychiatrist, psychiatric nurse, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services, and, if requesting involuntary outpatient services, an individualized plan of continued treatment. The individualized plan of continued treatment must be developed in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or public defender.

(d) The court shall appoint counsel to represent the person

who is the subject of the petition for continued involuntary services in accordance to the provisions set forth in subsection (5), unless the person in otherwise represented by counsel or eligible.

(e) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. However, the patient and the patient's attorney may agree to a period of continued outpatient services without a court hearing.

(f) Hearings on petitions for continued involuntary inpatient placement must be held in the county or the facility, as appropriate, where the patient is located.

(g) Notice of the hearing must be provided as set forth in s. 394.4599.

(h) If a patient's attendance at the hearing is voluntarily waived, the judge shall determine that the waiver is knowing and voluntary before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the judge finds that attendance at the hearing is not consistent with the best interests of the patient, the judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath and the proceedings must be recorded.

(i) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in accordance with s. 120.57(1), except that any order entered by the judge is final and subject to judicial review in accordance

with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are governed by s. 916.15.

(j) If at a hearing it is shown that the patient continues to meet the criteria for involuntary services, the court shall issue an order for continued involuntary services for up to 90 days. However, any order for involuntary inpatient placement, or a combination of involuntary services, may be for up to 6 months. The same procedure must be repeated before the expiration of each additional period the patient is retained.

(k) If the patient has been ordered to undergo involuntary services and has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by s. 394.4598. If the patient has been ordered to undergo involuntary inpatient placement only and the patient's competency to consent to treatment is restored, the administrative law judge may issue a recommended order to the court that found the patient incompetent to consent to treatment, that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(l) If continued involuntary inpatient placement is necessary for a patient in involuntary inpatient placement who was admitted while serving a criminal sentence, but his or her sentence is about to expire, or for a minor involuntarily placed, but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an

order authorizing continued involuntary inpatient placement.

The procedure required in this section must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(12) RETURN TO FACILITY.—If a patient has been ordered to undergo involuntary inpatient placement held at a treatment facility under this part and leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her return to the facility. The administrator may request the assistance of a law enforcement agency in this regard.

(13) DISCHARGE.—The patient shall be discharged upon expiration of the court order or at any time the patient no longer meets the criteria for involuntary services, unless the patient has transferred to voluntary status. Upon discharge, the service provider or facility shall send a certificate of discharge to the court.

Section 12. Subsection (2) of section 394.468, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

394.468 Admission and discharge procedures.—

(2) Discharge planning and procedures for any patient's release from a receiving facility or treatment facility must include and document the patient's needs, and actions to address such needs, for ~~consideration of~~, at a minimum:

(a) Follow-up behavioral health appointments;

(b) Information on how to obtain prescribed medications; and

(c) Information pertaining to:

1. Available living arrangements;

2. Transportation; and

(d) Referral to:

1. Care coordination services. The patient must be referred for care coordination services if the patient meets the criteria as a member of a priority population as determined by the department under s. 394.9082(3)(c); and

2.~~3.~~ Recovery support opportunities under s. 394.4573(2)(l), including, but not limited to, connection to a peer specialist.

(4) During the discharge transition process and while the patient is present, unless determined inappropriate by a physician, a receiving facility shall coordinate, face to face or through electronic means, ongoing treatment and discharge plans to a less restrictive community behavioral health provider, a peer specialist, a case manager, or a care coordination service. The transition process must include all of the following criteria:

(a) Implementation of policies and procedures outlining strategies for how the receiving facility will comprehensively address the needs of patients who demonstrate a high utilization of receiving facility services to avoid or reduce future use of crisis stabilization services;

(b) Developing, and including in discharge paperwork, a personalized crisis prevention plan that identifies stressors, early warning signs or symptoms, and strategies to deal with crisis; and

(c) Requiring a master's-level or licensed professional-

level staff member to engage a family member, legal guardian, legal representative, or natural support in discharge planning and meet face to face or through electronic means to review the discharge instructions, including prescribed medications, follow-up appointments, and any other recommended services or follow-up resources, and document the outcome of such meeting.

(5) When the recommended level of care at discharge is not immediately available to the patient, the receiving facility must initiate a referral to an appropriate provider to meet the needs of the patient and make appointments for interim services to continue care until the recommended level of care is available.

Section 13. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455 ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~qualified professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491.

Section 14. Subsection (5) of section 394.496, Florida

Statutes, is amended to read:

394.496 Service planning.—

(5) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 15. Paragraph (a) of subsection (2) of section 394.499, Florida Statutes, is amended to read:

394.499 Integrated children's crisis stabilization unit/juvenile addictions receiving facility services.—

(2) Children eligible to receive integrated children's crisis stabilization unit/juvenile addictions receiving facility services include:

(a) A minor whose parent makes ~~person under 18 years of age for whom~~ voluntary application based on the parent's express and informed consent, and the requirements of s. 394.4625(1)(a) are met ~~is made by his or her guardian, if such person is found to show evidence of mental illness and to be suitable for treatment pursuant to s. 394.4625. A person under 18 years of age may be admitted for integrated facility services only after a hearing to verify that the consent to admission is voluntary~~.

Section 16. Paragraphs (a) and (d) of subsection (1) of section 394.875, Florida Statutes, are amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(1)(a) The purpose of a crisis stabilization unit is to

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stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay ~~and shall be limited in size to a maximum of 30 beds~~.

~~(d) The department is directed to implement a demonstration project in circuit 18 to test the impact of expanding beds authorized in crisis stabilization units from 30 to 50 beds. Specifically, the department is directed to authorize existing public or private crisis stabilization units in circuit 18 to expand bed capacity to a maximum of 50 beds and to assess the impact such expansion would have on the availability of crisis stabilization services to clients.~~

Section 17. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(26)(a)3., 397.311(26)(a)1., and 394.455(41) ~~394.455(40)~~, respectively.

Section 18. Subsection (3) of section 397.305, Florida Statutes, is amended to read:

397.305 Legislative findings, intent, and purpose.—

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

(3) It is the purpose of this chapter to provide for a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services in the most appropriate and least restrictive environment which promotes long-term recovery while protecting and respecting the rights of individuals, primarily through community-based private not-for-profit providers working with local governmental programs involving a wide range of agencies from both the public and private sectors.

Section 19. Subsections (19) and (23) of section 397.311, Florida Statutes, are amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(19) "Impaired" or "substance abuse impaired" means having a substance use disorder or a condition involving the use of alcoholic beverages, illicit or prescription drugs, or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.

(23) "Involuntary treatment services" means an array of behavioral health services that may be ordered by the court for persons with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders.

Section 20. Subsection (6) is added to section 397.401, Florida Statutes, to read:

397.401 License required; penalty; injunction; rules waivers.—

(6) A service provider operating an addictions receiving facility or providing detoxification on a non-hospital inpatient

basis may not exceed its licensed capacity by more than 10 percent and may not exceed its licensed capacity for more than 3 consecutive working days or for more than 7 days in 1 month.

Section 21. Paragraph (i) is added to subsection (1) of section 397.4073, Florida Statutes, to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(i) Licensed physicians and nurses who require background screening by the Department of Health at initial licensure and renewal of licensure are not subject to background screening pursuant to this section if they are providing a service that is within their scope of licensed practice.

Section 22. Subsection (8) of section 397.501, Florida Statutes, is amended to read:

397.501 Rights of individuals.—Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must ensure the protection of such rights.

(8) RIGHT TO COUNSEL.—Each individual must be informed that he or she has the right to be represented by counsel in any judicial ~~involuntary~~ proceeding for involuntary substance abuse ~~assessment, stabilization, or~~ treatment and that he or she, or if the individual is a minor his or her parent, legal guardian, or legal custodian, may apply immediately to the court to have an attorney appointed if he or she cannot afford one.

Section 23. Section 397.581, Florida Statutes, is amended to read:

397.581 Unlawful activities relating to assessment and treatment; penalties.—

(1) A person may not knowingly and willfully:

(a) Furnish ~~Furnishing~~ false information for the purpose of obtaining emergency or other involuntary admission of another person ~~for any person is a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000~~.

(b) ~~(2)~~ Cause or otherwise secure, or conspire with or assist another to cause or secure ~~Causing or otherwise securing, or conspiring with or assisting another to cause or secure, without reason for believing a person to be impaired~~, any emergency or other involuntary procedure of another ~~for the~~ person under false pretenses ~~is a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000~~.

(c) ~~(3)~~ Cause, or conspire with or assist another to cause, without lawful justification ~~Causing, or conspiring with or assisting another to cause~~, the denial to any person of any right accorded pursuant to this chapter.

(2) A person who violates subsection (1) commits ~~is~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not exceeding $5,000.

Section 24. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and

stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a substance use disorder and a co-occurring mental health disorder and, because of such impairment or disorder:

(1) Has lost the power of self-control with respect to substance abuse; and

(2)(a) Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or

(b) Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another.

Section 25. Section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of

~~involuntary assessment and stabilization petitions and~~ involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person resides ~~is located~~. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings related to the petition or any ancillary matters thereto. The alleged impaired person is named as the respondent.

(2) RIGHT TO COUNSEL.—Unless the respondent is present and the court finds he or she knowingly, intelligently, and voluntarily waived legal representation, a respondent has the right to counsel at every stage of a judicial proceeding relating to a petition for his or her ~~involuntary assessment and a petition for his or her~~ involuntary treatment for substance abuse impairment. A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel and to the benefits of s. 57.081. If the court believes that the respondent needs or desires the assistance of counsel, the court shall appoint such counsel for the respondent without regard to the respondent's wishes. If the respondent is a minor not otherwise represented in the proceeding, the court shall immediately appoint a guardian ad litem to act on the minor's behalf.

Section 26. Subsection (1) of section 397.6751, Florida Statutes, is amended to read:

397.6751 Service provider responsibilities regarding involuntary admissions.—

(1) It is the responsibility of the service provider to:

(a) Ensure that a person who is admitted to a licensed service component meets the admission criteria specified in s. 397.675;

(b) Ascertain whether the medical and behavioral conditions of the person, as presented, are beyond the safe management capabilities of the service provider;

(c) Provide for the admission of the person to the service component that represents the most appropriate and least restrictive available setting that is responsive to the person's treatment needs;

(d) Verify that the admission of the person to the service component does not result in a census in excess of its licensed service capacity;

(e) Determine whether the cost of services is within the financial means of the person or those who are financially responsible for the person's care; and

(f) Take all necessary measures to ensure that each individual in treatment is provided with a safe environment, and to ensure that each individual whose medical condition or behavioral problem becomes such that he or she cannot be safely managed by the service component is discharged and referred to a more appropriate setting for care.

Section 27. Section 397.6818, Florida Statutes, is amended to read:

397.6818 Court determination.—

(1) When the petitioner asserts that emergency circumstances exist, or when upon review of the petition the court determines that an emergency exists, the court may rely solely on the contents of the petition and, without the

appointment of an attorney, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending.

(2) The court may further order a law enforcement officer or another designated agent of the court to:

(a) Take the respondent into custody and deliver him or her for evaluation to either the nearest appropriate licensed service provider or a licensed service provider designated by the court; and

(b) Serve the respondent with the notice of hearing and a copy of the petition.

(3) The service provider may not hold the respondent for longer than 72 hours of observation, unless:

(a) The service provider seeks additional time under s. 397.6957(1)(c) and the court, after a hearing, grants a motion allowing such additional time;

(b) The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until the issue is resolved but no later than the scheduled hearing date, absent a court-approved extension; or

(c) The original or extended observation period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, in which case the provider may hold the respondent until the next court working day.

(4) If the ex parte order was not executed by the initial hearing date, it shall be deemed void. However, should the

respondent not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets this chapter's commitment criteria and that a substance abuse emergency exists, the court may issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

(a) Shall continue the case for no more than 10 court working days; and

(b) May order a law enforcement officer or another designated agent of the court to:

1. Take the respondent into custody and deliver him or her for evaluation to either the nearest appropriate licensed service provider or a licensed service provider designated by the court; and

2. If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

Otherwise, the petitioner must inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as is practicable. However, if the respondent has not been assessed within 90 days, the court must dismiss the case. At the hearing initiated in accordance with s. 397.6811(1), the court shall hear all relevant testimony. The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to

him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675.

~~(1) Based on its determination, the court shall either dismiss the petition or immediately enter an order authorizing the involuntary assessment and stabilization of the respondent; or, if in the course of the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to injure himself or herself or another if allowed to remain at liberty, the court may initiate involuntary proceedings under the provisions of part I of chapter 394.~~

~~(2) If the court enters an order authorizing involuntary assessment and stabilization, the order shall include the court's findings with respect to the availability and appropriateness of the least restrictive alternatives and the need for the appointment of an attorney to represent the respondent, and may designate the specific licensed service provider to perform the involuntary assessment and stabilization of the respondent. The respondent may choose the licensed service provider to deliver the involuntary assessment where possible and appropriate.~~

~~(3) If the court finds it necessary, it may order the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court~~

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~~order or, if none is specified, to the nearest appropriate licensed service provider for involuntary assessment.~~

~~(4) The order is valid only for the period specified in the order or, if a period is not specified, for 7 days after the order is signed.~~

Section 28. Section 397.693, Florida Statutes, is renumbered as 397.68111, Florida Statutes, and amended to read:

397.68111 ~~397.693~~ Involuntary treatment.—A person may be the subject of a petition for court-ordered involuntary treatment pursuant to this part~~,~~ if that person:

(1) Reasonably appears to meet ~~meets~~ the criteria for involuntary admission provided in s. 397.675; ~~and:~~

(2)~~(1)~~ Has been placed under protective custody pursuant to s. 397.677 within the previous 10 days;

(3)~~(2)~~ Has been subject to an emergency admission pursuant to s. 397.679 within the previous 10 days; or

(4)~~(3)~~ Has been assessed by a qualified professional within 30 ~~5~~ days~~;~~

~~(4) Has been subject to involuntary assessment and stabilization pursuant to s. 397.6818 within the previous 12 days; or~~

~~(5) Has been subject to alternative involuntary admission pursuant to s. 397.6822 within the previous 12 days~~.

Section 29. Section 397.695, Florida Statutes, is renumbered as section 397.68112, Florida Statutes, and amended to read:

397.68112 ~~397.695~~ Involuntary treatment services; persons who may petition.—

(1) If the respondent is an adult, a petition for

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involuntary treatment services may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or an adult who has direct personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(2) If the respondent is a minor, a petition for involuntary treatment services may be filed by a parent, legal guardian, or service provider.

(3) The court may prohibit, or a law enforcement agency may waive, any service of process fees if a petitioner is determined to be indigent.

Section 30. Section 397.6951, Florida Statutes, is renumbered as 397.68141, Florida Statutes, and amended to read:

397.68141 ~~397.6951~~ Contents of petition for involuntary treatment services.—A petition for involuntary services must contain the name of the respondent; the name of the petitioner ~~or petitioners~~; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known; ~~the findings and recommendations of the assessment performed by the qualified professional;~~ and the factual allegations presented by the petitioner establishing the need for involuntary ~~outpatient~~ services for substance abuse impairment. The factual allegations must demonstrate:

(1) The reason for the petitioner's belief that the respondent is substance abuse impaired;

(2) The reason for the petitioner's belief that because of such impairment the respondent has lost the power of self-control with respect to substance abuse; and

(3)(a) The reason the petitioner believes that the

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respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless the court orders the involuntary services; or

(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(4) The petition may be accompanied by a certificate or report of a qualified professional who examined the respondent within 30 days before the petition was filed. This certificate or report must include the qualified professional's findings relating to his or her assessment of the patient and his or her treatment recommendations. If the respondent was not assessed before the filing of a treatment petition or refused to submit to an evaluation, the lack of assessment or refusal must be noted in the petition.

(5) If there is an emergency, the petition must also describe the respondent's exigent circumstances and include a request for an ex parte assessment and stabilization order that must be executed pursuant to s. 397.6818(4).

Section 31. Section 397.6955, Florida Statutes, is renumbered as section 397.68151, Florida Statutes, and amended to read:

397.68151 ~~397.6955~~ Duties of court upon filing of petition for involuntary services.—

(1) Upon the filing of a petition for involuntary services for a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the

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respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If the court appoints counsel for the person, the clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel, created pursuant to s. 27.511, of the appointment. The office of criminal conflict and civil regional counsel shall represent the person until the petition is dismissed, the court order expires, or the person is discharged from involuntary treatment services, or the office is otherwise discharged by the court. An attorney that represents the person named in the petition shall have access to the person, witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the petition within 10 court working ~~5~~ days unless a continuance is granted. The court may appoint a magistrate to preside at the hearing.

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be personally delivered to the respondent. The clerk ~~court~~ shall ~~also~~ issue a summons to the person whose admission is sought and unless a circuit court's chief judge authorizes disinterested private process servers to serve parties under this chapter, a

law enforcement agency must effect such service on the person whose admission is sought for the initial treatment hearing.

Section 32. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary treatment services.—

(1)(a) The respondent must be present at a hearing on a petition for involuntary treatment services~~,~~ unless the court finds he or she knowingly, intelligently, and voluntarily waives his or her right to be present or, upon receiving proof of service and evaluating the circumstances of the case, that his or her presence is inconsistent with his or her best interests or is likely to be injurious to himself or herself or others. The court shall hear and review all relevant evidence, including testimony from individuals such as family members familiar with the respondent's prior history and how it relates to his or her current condition, and the ~~review of~~ results of the assessment completed by the qualified professional in connection with this chapter. The court may also order drug tests. Upon finding of good cause, the court may permit all witnesses, including, but not limited to, medical professionals who are or have been involved with the respondent's treatment, to remotely attend and testify at the hearing under oath via audio-video teleconference. A witness intending to remotely attend and testify must provide the parties with all relevant documents by the close of business on the day before the hearing ~~the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his~~

~~or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings~~.

(b) A respondent may not be involuntarily ordered into treatment under this chapter without a clinical assessment being performed, unless he or she is present in court and expressly waives the assessment. In nonemergency situations, if the respondent was not, or had previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it reasonably appears that the respondent qualifies for involuntary treatment services, the court shall issue an involuntary assessment and stabilization order to determine the appropriate level of treatment the respondent requires. Additionally, in cases where an assessment was attached to the petition, the respondent may request, or the court on its own motion may order, an independent assessment by a court-appointed or otherwise agreed-upon qualified professional. If an assessment order is issued, it is valid for 90 days, and if the respondent is present or there is either proof of service or his or her location is known, the involuntary treatment hearing shall be continued for no more than 10 court working days. Otherwise, the petitioner must inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as is practicable. The assessment must occur before the new hearing date, and if there is evidence indicating that the respondent will not voluntarily appear at the forthcoming hearing or is a danger to self or others, the court may enter a preliminary order committing the

respondent to an appropriate treatment facility for further evaluation until the date of the rescheduled hearing. However, if after 90 days the respondent remains unassessed, the court shall dismiss the case.

(c)1. The respondent's assessment by a qualified professional must occur within 72 hours after his or her arrival at a licensed service provider unless the respondent shows signs of withdrawal or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until such issue is resolved but no later than the scheduled hearing date, absent a court-approved extension. If the respondent is a minor, such assessment must be initiated within the first 12 hours of the minor's admission to the facility. The service provider may also move to extend the 72 hours of observation by petitioning the court in writing for additional time. The service provider must furnish copies of such motion to all parties in accordance with applicable confidentiality requirements, and after a hearing, the court may grant additional time. If the court grants the service provider's petition, the service provider may continue to hold the respondent, and if the original or extended observation period ends on a weekend or holiday, including the hours before the ordinary business hours of the following workday morning, the provider may hold the respondent until the next court working day.

2. No later than the ordinary close of business on the day before the hearing, the qualified professional shall transmit, in accordance with any applicable confidentiality requirements, his or her clinical assessment to the clerk of the court, who

shall enter it into the court file. This report must contain a recommendation on the level of substance abuse treatment the respondent requires, if any, and the relevant information on which the qualified professional's findings are based. This document must further note whether the respondent has any co-occurring mental health or other treatment needs. For adults subject to an involuntary assessment, the report's filing with the court satisfies s. 397.6758 if it also contains the respondent's admission and discharge information. The qualified professional's failure to include a treatment recommendation, much like a recommendation of no treatment, shall result in the petition's dismissal.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse; and

(b) Because of such impairment the respondent is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary and:

1. Without services, the respondent is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that there is a substantial likelihood that without services the respondent will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or

2. The respondent's refusal to voluntarily receive care is

based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(3) ~~One of the qualified professionals who executed the involuntary services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The~~ Testimony in the hearing must be taken under oath, and the proceedings must be recorded. The respondent ~~patient~~ may refuse to testify at the hearing.

(4) If at any point during the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, meets the involuntary commitment provisions of part I of chapter 394, the court may initiate involuntary examination proceedings under such provisions.

(5) At the conclusion of the hearing the court shall either dismiss the petition or order the respondent to receive involuntary treatment services from his or her chosen licensed service provider if possible and appropriate. Any treatment order must include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

Section 33. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary treatment services

period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary treatment services continues to meet the criteria for involuntary treatment services in s. 397.693 or s. 397.6957, a petition for renewal of the involuntary services order must ~~may~~ be filed with the court at least 10 days before the expiration of the court-ordered services period. The petition may be filed by the service provider or by the person who filed the petition for the initial treatment order if the petition is accompanied by supporting documentation from the service provider. The court shall immediately schedule a hearing within 10 court working days to be held not more than 15 days after filing of the petition. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties and counsel to the proceeding. The hearing is conducted pursuant to ss. 397.6957 and 397.697 and must be before the circuit court unless referred to a magistrate ~~s. 397.6957~~.

(2) If the court finds that the petition for renewal of the involuntary treatment services order should be granted, it may order the respondent to receive involuntary treatment services for a period not to exceed an additional 90 days. When the conditions justifying involuntary treatment services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary treatment services continue to exist after an additional 90 days of service, a new petition requesting renewal of the involuntary treatment services order may be filed pursuant to this section.

~~(3) Within 1 court working day after the filing of a petition for continued involuntary services, the court shall appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel of such appointment. The office of criminal conflict and civil regional counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.~~

~~(4) Hearings on petitions for continued involuntary services shall be before the circuit court. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.~~

~~(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.~~

~~(6) The same procedure shall be repeated before the expiration of each additional period of involuntary services.~~

~~(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.~~

Section 34. Section 397.6977, Florida Statutes, is amended

to read:

397.6977 Disposition of individual upon completion of involuntary services.—

(1) At the conclusion of the 90-day period of court-ordered involuntary services, the respondent is automatically discharged unless a motion for renewal of the involuntary services order has been filed with the court pursuant to s. 397.6975.

(2) Discharge planning and procedures for any respondent's release from involuntary treatment services must include and document the respondent's needs and actions to address such needs for, at a minimum:

(a) Follow-up behavioral health appointments;

(b) Information on how to obtain prescribed medications;

(c) Information pertaining to available living arrangements and transportation; and

(d) Referral to recovery support opportunities, including, but not limited to, connection to a peer specialist.

Section 35. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455 ~~s. 394.455(49)~~.

Section 36. Paragraph (e) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

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464.012 Licensure of advanced practice registered nurses; fees; controlled substance prescribing.—

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse may perform the following acts within his or her specialty:

(e) A psychiatric nurse, who meets the requirements in s. 394.455 ~~s. 394.455(36)~~, within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.

Section 37. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455 ~~s. 394.455(49)~~, without an involuntary placement proceeding as provided by law.

Section 38. Paragraph (c) of subsection (2) of section 916.13, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant.

(c)1. If the department determines at any time that a defendant will not or is unlikely to regain competency to proceed, the department shall, within 30 days after the determination, complete and submit a competency evaluation

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report to the circuit court to determine if the defendant meets the criteria for involuntary commitment under s. 394.467. A qualified professional, as defined in s. 394.455, shall sign the competency evaluation report for the circuit court under penalty of perjury. A copy of the report must be provided, at a minimum, to the court, state attorney, and counsel for the defendant before initiating any transfer of the defendant back to the committing jurisdiction.

2. For the purposes of this paragraph, the term "competency evaluation report to the circuit court" means a report by the department regarding a defendant's incompetence to proceed in a criminal proceeding due to mental illness as set forth in this section. The report must include, at a minimum, the following information regarding the defendant:

a. A description of mental, emotional, and behavioral disturbances;

b. An explanation to support the opinion of incompetence to proceed;

c. The rationale to support why the defendant is unlikely to gain competence to proceed in the foreseeable future;

d. A clinical opinion regarding whether the defendant no longer meets the criteria for involuntary forensic commitment pursuant to this section; and

e. A recommendation on whether the defendant meets the criteria for involuntary services pursuant to s. 394.467.

(d) The defendant must be transported, in accordance with s. 916.107, to the committing court's jurisdiction within 7 days after ~~of~~ notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. A

determination on the issue of competency must be made at a hearing within 30 days of the notification. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. To ensure continuity of care, the referring mental health facility must transfer the patient with up to 30 days of medications and assist in discharge planning with medical teams at the receiving county jail. The jail and facility's department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician. Notwithstanding this paragraph, a defendant who meets the criteria for involuntary examination pursuant to s. 394.463 as determined by an independent clinical opinion shall appear remotely for the hearing. Court witnesses may appear remotely.

Section 39. Section 397.6811, Florida Statutes, is repealed.

Section 40. Section 397.6814, Florida Statutes, is repealed.

Section 41. Section 397.6815, Florida Statutes, is repealed.

Section 42. Section 397.6819, Florida Statutes, is repealed.

Section 43. Section 397.6821, Florida Statutes, is repealed.

Section 44. Section 397.6822, Florida Statutes, is repealed.

Section 45. Section 397.6978, Florida Statutes, is repealed.

Section 46. This act shall take effect July 1, 2024.

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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

February 27, 2024
Meeting Date

Fiscal
Committee

SB 1784
Bill Number or Topic

132348 (DE)
Amendment Barcode (if applicable)

Name Kyle Shephard

Phone (407) 579-5952

Address 400 S. Orange Ave.
Street

Email kyle.shephard@orlando.gov

Orlando FL 32801
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: City of Orlando

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

2/27/2024
Meeting Date

Fiscal Policy
Committee

1784
Bill Number or Topic

132348 DE
Amendment Barcode (if applicable)

Name Melanie Brown Woofter

Phone 850-224-6048

Address 316 East Park Ave
Street

Email melanie@floridabha.org

Tallahassee FI 32301
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
Florida Council for Behavioral Healthcare

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1784
Bill Number or Topic

Amendment Barcode (if applicable)

Name Nancy Lawther, Ph.D. (Florida PTA)

Phone 407 855-7604

Address 1747 Orlando Central Pkwy
Street

Email legislation@floridapta.org

Orlando FL 32809
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: Florida PTA

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2/27/24
Meeting Date

Fiscal Policy
Committee

SB 1784
Bill Number or Topic

Amendment Barcode (if applicable)

Name Eileen Segal (PTA Miami DADE) Phone 305 995 1102

Address 1450 NE 2 Ave Email Eileensegalpta@gmail.com
Street

Miami FL 33132
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

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S-001 (08/10/2021)

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 Fiscal Policy

BILL:	CS/CS/SB 7042
INTRODUCER:	Fiscal Policy Committee; Appropriations Committee on Agriculture, Environment, and General Government Committee; and Governmental Oversight and Accountability Committee
SUBJECT:	Commodities Produced by Forced Labor
DATE:	February 28, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Limones-Borja	McVaney		**GO Submitted as Comm. Bill/Fav**
1.	Davis	Betta	AEG	**Fav/CS**
2.	Limones-Borja	Yeatman	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 7042 creates a new provision in ch. 287, F.S., preventing contracts with companies for commodities produced, in whole or in part, by forced labor. For purposes of this legislation, "forced labor" means work or service exacted from any person, including a minor, under the menace of a penalty for nonperformance and for which the worker does not offer himself or herself voluntarily or an activity that violates s. 787.06, F.S.

The bill requires the Department of Management Services (DMS or department) to create and maintain a forced labor vendor list that identifies companies that are disqualified from public contracting and purchasing process for 365 days. The DMS shall publish an updated version of the list quarterly, and electronically post the list on its website.

A company is considered disqualified from the public contracting and purchasing process as of the date a final order is entered. Once placed on the forced labor vendor list, a company may not:

- Submit a bid, proposal, or reply on a contract to provide any commodities to an agency;
- Be awarded a contract or perform work as a contractor, supplier, subcontractor, or consultant; or
- Transact business pertaining to the provision of commodities with an agency.

Likewise, an agency (a state executive branch entity generally) may not (1) accept a bid, proposal, or reply from; (2) award a contract to; or (3) transact business with a company on the forced labor vendor list. These prohibitions apply for a period of 365 days after the date the company was placed on the list, unless the company is removed from the list earlier.

The bill requires all invitations to bid, requests for proposals, invitations to negotiate, and any written contracts for the provision of commodities by an agency to include a statement informing companies of such requirements related to forced labor. Contracts with an agency for the provision of commodities entered into or renewed on or after July 1, 2024, must contain a provision that allows the awarding agency to terminate the contract if the company is placed on the forced labor vendor list.

Prior to putting a company on the forced labor vendor list, the DMS must investigate reasonable and credible information that a company has submitted a false certification or provided a commodity produced by forced labor. If good cause exists, and if placement on the list is in the public interest, the DMS must notify the company in writing of its intent to place the company on the list. The notice must include a notice of ch. 120, F.S., hearing rights and of the applicable hearing procedures and time requirements.

A company that submits a false certification that the commodities it offered to the agency had not been produced, in whole or in part, by forced labor and is subsequently placed on the forced labor vendor list must be assessed a fine by the DMS.

The bill clarifies that placement on the forced labor vendor list does not affect any rights or obligations under any contract, franchise, or other binding agreement which predate such placement.

The bill may have an insignificant fiscal impact on state revenues and expenditures. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

Government Contracting and Procurement

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services. The Department of Management Services (DMS or department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities.[2] Its responsibilities include creating uniform agency procurement rules,[3] implementing the online procurement program,[4] and procuring state term

[1] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[2] *See* ss. 287.032 and 287.042, F.S.
[3] *See* ss. 287.032(2) and 287.042(3), (4), and (12), F.S.
[4] *See* s. 287.057(24), F.S. *See* ss. 287.032 and 287.042, F.S.

contracts.[5] The DMS is also responsible for registering vendors that wish to provide goods or services to the state[6] and maintaining lists of vendors who may not submit bids, proposals, or replies to agency solicitations.[7] The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[8]

Current law requires contracts for commodities or contractual services in excess of $35,000 to be procured utilizing a competitive solicitation process.[9,10] These competitive procurement provisions apply to an agency, defined as "any of the various state officers, departments, board commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive boards of state government.[11] This definition does not include municipalities and local governments; and university and college boards of trustees, and the state universities and colleges are specifically excluded from this definition.[12]

State agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Invitations to bid,[13] used when an agency determines that standard services or goods will meet needs, wide competition is available and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,[14] used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,[15] used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

[5] *See* ss. 287.042(2) and 287.056, F.S
[6] *See* ss. 287.032 and 287.042, F.S.; *see also* Department of Management Services, *Vendor Registration and Vendor Lists*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited Jan. 31, 2024).
[7] *See* ss. 287.1351, 287.133, 287.134, and 287.137, F.S.
[8] Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to means of transport.
[9] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold provided in s. 287.017, F.S., to be competitively bid.
[10] As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[11] Section 287.012(1), F.S.
[12] *Id*.
[13] Section 287.057(1)(a), F.S.
[14] Section 287.057(1)(b), F.S.
[15] Section 287.057(1)(c), F.S.

A competitive solicitation for contractual services in excess of $35,000 must be evidenced by a written agreement (contract) embodying all provisions and conditions of the procurement.[16] The contract must include, but not be limited to, provisions on the following:

- Bills for fees or other compensation for services or expenses must be submitted in detail sufficient for a proper pre-audit and post-audit of such items;[17]
- Bills for any travel expenses be submitted in accordance with the law on per diem and travel expenses of public officers, employees, or authorized persons;[18]
- Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt;[19]
- Specifying a scope of work clearly establishing all tasks the contractor is required to perform;[20]
- Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment;[21]
- Specifying the performance criteria and the final date by which such criteria must be met for completion of the contract;[22]
- Specifying the conditions that must be met for a renewal of the contract, including, but not limited to:[23]
    - The contract may be renewed for a period not exceeding three years or the term of the original contract, whichever is longer;
    - The renewal price for the contractual service as set forth in the bid, proposal, or reply;
    - Specifying costs for the renewal may not be charged; and
    - Specifying that contract renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds;
- Specifying the financial consequences if the contractor fails to perform in accordance with the contract;[24] and
- Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.[25]

The contract must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of $35,000.[26] The Chief Financial Officer (CFO) may waive the contracting requirements for the procurement of certain specified commodities or services, unless otherwise provided in the annual General Appropriations Act (GAA) or the

[16] Section 287.058(1), F.S., provides an exception for the written agreement for contractual services that provide health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or provide other benefits as required by ch. 440, F.S.
[17] Section 287.058(1)(a), F.S.
[18] Section 287.058(1)(b), F.S.
[19] Section 287.058(1)(c), F.S.
[20] Section 287.058(1)(d), F.S.
[21] Section 287.058(1)(e), F.S.
[22] Section 287.058(1)(f), F.S.
[23] Section 287.058(1)(g), F.S.
[24] Section 287.058(1)(h), F.S.
[25] Section 287.058(1)(i), F.S.
[26] Section 287.058(2), F.S.

substantive bill implementing the GAA.[27] A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term.[28] Each public agency contract for services must authorize the public agency to inspect the following records within 10 days after the agency makes a request:[29]

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.[30]
- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.[31]

Department Vendor Lists

The DMS maintains a vendor list based on the vendor registration process,[32] and may remove from the vendor list any source of supply that fails to fulfill any of its duties specified in a contract.[33] The DMS also maintains the following lists of disqualified, scrutinized, or removed vendors:

- Suspended Vendor List;[34]
- Convicted Vendor List;[35]
- Discriminatory Vendor List;[36]
- Scrutinized List of Prohibited Companies; and[37]
- Antitrust Violator Vendor List.[38]

Forced Labor

The term "forced labor" is defined as part of the Tariff Act of 1930 (Act), to mean "all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, including forced or indentured child labor."[39] The Act also prohibits importing any product into the U.S. that was mined, produced, or manufactured wholly or in part by forced labor, with some limited exceptions.[40]

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[27] Section 287.058(5), F.S., incorporates s. 287.057(3)(e), F.S., which lists 13 specific types of commodities or services for which the contracting requirement may be waived, including, for example, artistic services, lectures by individuals, certain health services, family placement services, and services or commodities provided by governmental entities.
[28] Section 287.058(6), F.S.
[29] Section 216.1366(1), F.S
[30] Section 216.1366(1)(a), F.S.
[31] Section 216.1366(1)(b), F.S
[32] Section 287.042, F.S. *See also* The Department of Management Services, *Vendor Resources*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited Jan. 31, 2024).
[33] Section 287.042(1)(b), F.S.
[34] Section 287.1351, F.S.
[35] Section 287.133, F.S.
[36] Section 287.134, F.S.
[37] Section 287.135, F.S
[38] Section 287.137, F.S.
[39] 19 U.S.C. § 1307.
[40] *Id.*

Florida Law includes the term "forced labor" within the context of human trafficking[41], finding that that victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[42] Human trafficking occurs in many forms of labor exploitation including domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.[43] Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor,[44] services,[45] or commercial sexual activity, commits a crime.[46]

Administrative Procedures Act

The Administrative Procedures Act (APA) provides that a party who wishes to challenge an agency determination of his or her substantial interests must file a petition for a hearing with the agency. An agency request for an administrative law judge (ALJ) must be made to the Division of Administrative Hearings within 15 days after receiving the petition.[47,48] All parties shall be given an opportunity for a hearing after reasonable notice.[49] Generally, agency determinations that impact a party's substantial interests are subject to either an informal hearing in which the petitioner does not dispute any material facts of the agency's final action,[50] or a formal hearing, in which the petitioner disputes a material fact of the agency's final action.[51]

III. Effect of Proposed Changes:

Section 1 creates s. 287.1346, F.S., to define the following terms:

- "Forced labor" means work or service exacted from any person, including a minor, under the menace of a penalty for nonperformance and for which the worker does not offer himself or herself voluntarily or an activity that violates s. 787.06, F.S.
- "Forced labor vendor list" or "list" means the list required to be created and maintained by the Department of Management Services (DMS or department) pursuant to s. 287.1346(4)(d), F.S.
- "Senior management" includes chief executive officers; assistant chief executive officers, including, but not limited to, assistant presidents, vice presidents, or assistant treasurers; chief

[41] Section 787.06 (2)(d), F.S., defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.
[42] Section 787.06(1)(a), F.S.
[43] Section 787.06(1)(b), F.S.
[44] Section 787.06(2)(e), F.S., defines "labor" as: work of economic or financial value.
[45] Section 787.06(2)(h), F.S., defines "services" as: any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.
[46] Section 787.06(3), F.S.
[47] Section 120.569(2)(a), F.S.
[48] Section 120.569, F.S., applies except when mediation is elected by all parties pursuant to s. 120.573, or when a summary hearing is elected by all parties pursuant to s. 120.574, F.S.
[49] The notice must contain a statement of (1) time, place, and nature of the hearing; and (2) the legal authority and jurisdiction under which the hearing is to be held. Section 120.569(2)(b), F.S.
[50] Section 120.57(2), F.S.
[51] Sections 120.569 and 120.57(1), F.S.

financial officers; chief personnel officers; or any employee of an entity performing similar functions.

Agency Procurement of Commodities

The bill prevents a company on the forced labor vendor list from:

- Submitting a bid, proposal, or reply on a contract to provide any commodities to an agency;
- Being awarded a contract or performing work as a contractor, supplier, subcontractor, or consultant with an agency for the provision of commodities; or
- Transacting business pertaining to the provision of commodities with any agency.

Likewise, an agency cannot (1) accept a bid, proposal, or reply from; (2) award a contract to; or (3) transact business with a company, or an entity under the control of such company, on the forced labor vendor list. These prohibitions apply for a period of 365 days after the date the company was placed on the list, unless the company is removed from the list earlier.

The bill requires all invitations to bid, requests for proposals, invitations to negotiate, and any written contracts for the provision of commodities by an agency to include a statement informing companies of such requirements related to forced labor. Contracts with an agency for the provision of commodities entered into or renewed on or after July 1, 2024, must contain a provision that allows the awarding agency to terminate the contract if the company is placed on the forced labor vendor list.

A member of a company's senior management must certify in writing that, to the best of his/her knowledge, the commodities offered to the agency have not been produced, in whole or in part, by forced labor when a company submits a bid, proposal, or reply for a contract and before the company enters into or renews a contract with an agency for the provision of commodities. A company must notify the DMS within 30 days of gaining knowledge that it provided a commodity produced, in whole or in part, by forced labor. Additionally, an agency that learns that it received a commodity produced, in whole or in part, by forced labor must report this information to the DMS in writing within 10 days.

Forced Labor Vendor List

The DMS must create and maintain a forced labor vendor list. The list must contain the name and address of each company that has been disqualified from the public contracting and purchasing process. The DMS must publish an updated version of the list quarterly, and electronically post the list on its website. A company is disqualified from the public contracting and purchasing process as of the date a final order is entered. A company is removed automatically from the list 366 days after the date of the final order placing the company on the list.

The DMS must investigate reasonable and credible information that a company has submitted a false certification or provided a commodity produced by forced labor. If good cause exists, and if placement on the list is in the public interest, the DMS must initiate a proceeding to place the company on the forced labor vendor list, and notify the company in writing of its intent. The

DMS's notice must include a notice of ch. 120, F.S., hearing rights and of the applicable hearing procedures and time requirements.

The bill provides specific guidance on when it is not in the public interest to place a company on the forced labor list. Specifically, a company cannot be placed on the list if any of the following apply:

- The company did not provide to an agency a commodity produced, in whole or in part, by forced labor;
- The company's senior management did not have actual or constructive knowledge that its employee provided an agency a commodity produced, in whole or in part, by forced labor;
- The member of the company's senior management responsible for the contract under which the company provided to the agency a commodity produced, in whole or in part, by forced labor did not have actual or constructive knowledge that the commodity was produced, in whole or in part, by forced labor and a reasonable person under similar circumstances to that of such member would not have known that the commodity was produced, in whole or in part, by forced labor;
- The member of the company's senior management responsible for the contract under which the company provided to the agency a commodity produced, in whole or in part, by forced labor is no longer an employee of the company; or
- The agency head, or a designee who is delegated the authority to execute contracts on behalf of the agency, makes a public finding that, absent the provision of such commodities by the company, the agency would be unable to obtain the commodities.

The bill also requires the following factors be considered when determining whether it is in the public interest to place a company on the forced labor vendor list:

- The nature and details of the provision of the commodity produced, in whole or in part, by forced labor.
- The degree of culpability of the company proposed to be placed on the forced labor vendor list.
- Prior or future self-policing by the company to prevent the provision of a commodity produced, in whole or in part, by forced labor.
- The company's compliance with the notification requirements.
- The needs of agencies for additional competition in the procurement of commodities in their respective markets.
- Mitigation based upon any demonstration of good citizenship by the company, including, but not limited to, the adoption of a formal plan to cease producing or providing commodities produced, in whole or in part, by forced labor.

A company may file a petition for a hearing to dispute issues of material fact pursuant to the department's determination within 21 days of its receipt of the DMS's notice of intent to place the company on the forced labor vendor list. The bill specifically prevents a company from filing a petition for a hearing unless it involves disputed issues of material fact. If a company does not request a hearing, the DMS is required to enter a final order, which places the company on the list.

The bill requires that ch. 120, F.S., applies to such hearings, but sets the following exceptions:

- The petition must be filed with the DMS. The DMS shall be a party to the proceeding for all purposes.
- Within five days after the filing of the petition, the department shall notify the Division of Administrative Hearings (DOAH) of the request for a hearing. The DOAH shall, within five days after receipt of notice from the DMS, assign an administrative law judge (ALJ) to the proceeding. The ALJ, upon request by a party, may consolidate related proceedings.
- The ALJ shall conduct the hearing within 30 days after being assigned, unless otherwise stipulated by the parties.
- Within 30 days after the hearing or receipt of the hearing transcript, whichever is later, the ALJ shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. The final order must determine whether or not to place the company on the forced labor vendor list.
- The ALJ's final order constitutes final agency action for purposes of s. 120.68, F.S.
- At any time after the filing of the petition, the parties may opt to informally dispose of the matter pursuant to s. 120.57(4), F.S. In that event, the ALJ shall enter a final order adopting the stipulation, agreed settlement, or consent order.

The DMS must prove by clear and convincing evidence that it is in the public interest to place the company on the forced labor vendor list. The bill creates a rebuttable presumption, wherein proof that the company provided a commodity produced, in whole or in part, by forced labor to an agency constitutes a presumption that it is in the public interest for the company to be placed on the forced labor vendor list. The company may rebut this presumption by proving, by a preponderance of the evidence, that it is not in the public interest for such company to be placed on the list based upon evidence required in the bill.

The ALJ must issue a final order, which constitutes final agency action, determining whether to place the company on the forced labor vendor list.

Removal from the Forced Labor Vendor List

The bill allows a company placed on the forced labor vendor list to petition for its removal after six months since the date a final order is entered placing them on the list. Such petition must be filed with the DMS.

An ALJ may remove a company from the forced labor vendor list upon a determination that removal is in the public interest. The ALJ must consider any relevant factors, including whether the company has prepared a corrective action plan that addresses the original grounds for placement on the list as well as any additional evidence that the company has in good faith taken significant remedial action.

A company cannot petition for another hearing if a petition for removal is denied. The bill allows the DMS to petition for removal prior to the 365-day period.

False Certification

A company that submits a false certification that the commodities it offered to the agency were not been produced, in whole or in part, by forced labor and is subsequently placed on the forced labor vendor list must be assessed a fine by the DMS. Specifically, the bill requires the fine be the greater of $1,000, or an amount equal to 20 percent of the value of the commodity provided to the agency under the contract.

Miscellaneous

The bill clarifies that placement on the forced labor vendor list does not affect any rights or obligations under any contract, franchise, or other binding agreement which predate such placement.

The bill provides that any fines collected be deposited into the General Revenue Fund.

Section 2 provides that the bill will take effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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 state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Management Services (DMS) may incur additional workload for the oversight and management for maintaining and administering the forced labor vendor list; however, such, workload can be absorbed within the current resources of the DMS. The bill may have an indeterminate positive fiscal impact on the General Revenue Fund by fines collected under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 287.1346 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 Fiscal Policy on February 27, 2024:
The committee substitute provides that only an agency head or a designee (instead of the Governor for executive agencies) is authorized to make a public finding that absent the provision of such commodities by the company, the agency would be unable to obtain the commodities.

CS by Appropriations Committee on Agriculture, Environment, and General Government on February 13, 2024:
The committee substitute is a technical amendment to correctly reference the department (meaning the Department of Management Services or DMS) instead of "agency" as it relates to allowing a company to file a petition for a hearing to dispute issues of material fact pursuant to the "department's" determination within 21 days of its receipt of the DMS's notice of intent to place the company on the forced labor vendor list.

B. Amendments:

None.

368128

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/28/2024	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Avila) recommended the following:

Senate Amendment

Delete lines 145 - 155
and insert:
e. The agency head or a designee delegated the authority to execute contracts on behalf of the agency makes a public finding that, absent the provision of such commodities by the company, the agency would be unable to obtain the commodities for which the contract is offered.

By the Appropriations Committee on Agriculture, Environment, and General Government; the Committee on Governmental Oversight and Accountability; and Senator Rodriguez

601-03263-24 20247042c1

A bill to be entitled

An act relating to commodities produced by forced labor; creating s. 287.1346, F.S.; defining terms; prohibiting a company on the forced labor vendor list from taking certain procurement actions; prohibiting an agency from procuring commodities from certain companies for a certain timeframe; requiring that certain solicitations and contracts include a certain statement; requiring that certain contracts include a certain termination provision; requiring a member of a company's senior management to provide a certain certification within a specified timeframe; requiring a company to provide a certain notification to the Department of Management Services within a certain timeframe; requiring an agency to provide certain information to the department within a certain timeframe; requiring the department to create and maintain a forced labor vendor list; providing requirements for such list; requiring the department to publish such list quarterly and to post such list on its website; providing for automatic removal from the list if certain conditions are met; providing a process for the department to place a company on such list; subjecting a company that submits a false certification or that should have had certain knowledge to a fine; authorizing a company that receives certain notice to file a petition for a certain hearing; providing requirements and procedures for such hearings; providing evidentiary standards for

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

601-03263-24 20247042c1

certain proceedings; authorizing a company placed on such list to petition for removal; providing requirements for such petitions; authorizing the removal of a company from such list under certain circumstances; providing construction; requiring that collected fines be deposited into the General Revenue Fund; providing an effective date.

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

Section 1. Section 287.1346, Florida Statutes, is created to read:

287.1346 Provision of commodities produced by forced labor; denial or revocation of the right to transact business with agencies.—

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

(a) "Forced labor" means work or service exacted from any person, including a minor, under the menace of a penalty for nonperformance and for which the worker does not offer himself or herself voluntarily or an activity that violates s. 787.06.

(b) "Forced labor vendor list" or "list" means the list required to be created and maintained by the department pursuant to paragraph (4)(d).

(c) "Senior management" includes chief executive officers; assistant chief executive officers, including, but not limited to, assistant presidents, vice presidents, or assistant treasurers; chief financial officers; chief personnel officers; or any employee of an entity performing similar functions.

(2) A company on the forced labor vendor list may not:

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

(a) Submit a bid, proposal, or reply on a contract to provide any commodities to an agency.

(b) Be awarded a contract or perform work as a contractor, supplier, subcontractor, or consultant with an agency for the provision of commodities.

(c) Transact business for the provision of commodities with any agency.

(3) An agency may not accept a bid, proposal, or reply from, award a contract to, or transact business pertaining to the provision of commodities with a company on the forced labor vendor list, or an entity under the control of such company, for a period of 365 days after the date the company is placed on the list unless the company is removed from the list pursuant to paragraph (5)(d).

(4)(a)1. All invitations to bid, requests for proposals, and invitations to negotiate and any written contract for the provision of commodities by an agency must include a statement informing companies of the requirements of this section.

2. Any contract with an agency for the provision of commodities entered into or renewed on or after July 1, 2024, must include a provision that allows for the termination of such contract at the option of the awarding agency if the company is placed on the forced labor vendor list.

(b) At the time a company submits a bid, proposal, or reply for a contract and before the company enters into or renews a contract with an agency for the provision of commodities, a member of the company's senior management must certify, in writing, that to the best of his or her knowledge the commodities such company is offering to the agency have not been

produced, in whole or in part, by forced labor.

(c) A company must notify the department within 30 days after gaining actual knowledge that the company has provided to an agency a commodity produced, in whole or in part, by forced labor. Any agency that receives information that a company has provided to an agency a commodity produced, in whole or in part, by forced labor must provide that information to the department in writing within 10 days.

(d) The department shall create and maintain a forced labor vendor list that contains the name and address of each company that has been disqualified from the public contracting and purchasing process under this section. The department shall publish an updated version of the list quarterly. The updated quarterly list shall be electronically posted on the department's website. Notwithstanding this paragraph, a company disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date a final order is entered pursuant to paragraph (e) or paragraph (5)(a). A company is removed automatically from the list 366 days after the date of the final order placing the company on the list.

(e) Upon receiving from any source reasonable and credible information that a company has submitted a false certification or provided to an agency a commodity produced, in whole or in part, by forced labor, the department shall investigate the information and determine whether good cause exists to place the company on the forced labor vendor list and whether such placement is in the public interest. If good cause exists and placement is in the public interest, the department shall notify

the company in writing of the department's intent to place the company on the list and of the company's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the company does not request a hearing, the department shall enter a final order placing the company on the forced labor vendor list. A company may not be placed on the forced labor vendor list without receiving an individual notice of intent from the department.

1. It is not in the public interest to place a company on the forced labor vendor list if any of the following applies:

a. The company did not provide to an agency a commodity produced, in whole or in part, by forced labor;

b. The provision to an agency of a commodity produced, in whole or in part, by forced labor was committed by an employee of the company without the actual or constructive knowledge of any member of the company's senior management;

c. The member of the company's senior management responsible for the contract under which the company provided to the agency a commodity produced, in whole or in part, by forced labor did not have actual or constructive knowledge that the commodity was produced, in whole or in part, by forced labor and a reasonable person under similar circumstances to that of such member would not have known that the commodity was produced, in whole or in part, by forced labor;

d. The member of the company's senior management responsible for the contract under which the company provided to the agency a commodity produced, in whole or in part, by forced labor is no longer an employee of the company; or

e. One of the following occurs:

(I) For a contract with an executive agency, the Governor makes a public finding that, absent the provision of such commodities by the company, the agency would be unable to obtain the commodities for which the contract is offered.

(II) For a contract with an agency of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent the provision of such commodities by the company, the agency would be unable to obtain the commodities for which the contract is offered.

2. In determining whether it is in the public interest to place a company on the forced labor vendor list, the following factors shall be considered:

a. The nature and details of the provision of the commodity produced, in whole or in part, by forced labor.

b. The degree of culpability of the company proposed to be placed on the forced labor vendor list.

c. Prior or future self-policing by the company to prevent the provision of a commodity produced, in whole or in part, by forced labor.

d. The company's compliance with paragraph (c).

e. The needs of agencies for additional competition in the procurement of commodities in their respective markets.

f. Mitigation based upon any demonstration of good citizenship by the company, including, but not limited to, the adoption of a formal plan to cease producing or providing commodities produced, in whole or in part, by forced labor.

(f) A company that submits a false certification under paragraph (b) or that should have known that a commodity

provided under a contract with an agency was produced, in whole or in part, by forced labor and is subsequently placed on the forced labor vendor list shall be assessed a fine of $1,000 or an amount equal to 20 percent of the value of the commodity provided to the agency under the contract, whichever is greater.

(5)(a) Within 21 days after receipt of the notice of intent pursuant to paragraph (4)(e), the company may file a petition for a hearing involving disputed issues of material fact pursuant to ss. 120.569 and 120.57(1) to challenge the department's determination that the company's placement on the forced labor vendor list is in the public interest. A company may not file a petition for a hearing not involving disputed issues of material fact under s. 120.57(2). Chapter 120 applies to a hearing under this section except that:

1. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.

2. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a hearing pursuant to ss. 120.569 and 120.57(1). The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge to preside over the proceeding. The administrative law judge, upon request by a party, may consolidate related proceedings.

3. The administrative law judge shall conduct the hearing within 30 days after being assigned, unless otherwise stipulated by the parties.

4. Within 30 days after the hearing or receipt of the hearing transcript, whichever is later, the administrative law

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

judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the company on the forced labor vendor list.

5. The final order of the administrative law judge shall be final agency action for purposes of s. 120.68.

6. At any time after the filing of the petition, informal disposition may be made pursuant to s. 120.57(4). In that event, the administrative law judge shall enter a final order adopting the stipulation, agreed settlement, or consent order.

(b) In any proceeding under this section, the department is required to prove by clear and convincing evidence that it is in the public interest for the company to which the department has provided notice of intent pursuant to paragraph (4)(e) to be placed on the forced labor vendor list. Proof that such company provided to an agency a commodity produced, in whole or in part, by forced labor constitutes a rebuttable presumption that it is in the public interest for the company to be placed on the forced labor vendor list.

(c) Upon establishment of the rebuttable presumption in paragraph (b) that it is in the public interest for the company to be placed on the forced labor vendor list, that company may prove by a preponderance of the evidence that it is not in the public interest for such company to be placed on the list based upon evidence addressing the provisions of sub-subparagraph (4)(e)1. or the factors in sub-subparagraph (4)(e)2.

(d)1. A company on the forced labor vendor list may petition for such company's removal from the list no sooner than

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

6 months after the date a final order is entered placing the company on the list. The petition shall be filed with the department, and the proceeding shall be conducted pursuant to this subsection.

2. A company may be removed from the forced labor vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal is in the public interest, the administrative law judge shall give consideration to any relevant factors, including whether the company has prepared a corrective action plan that addresses the original grounds for placement on the list as well as any additional evidence that the company has in good faith taken significant remedial action.

3. If a petition for removal is denied, the company may not petition for another hearing on removal. The department may petition for removal before the expiration of the 365-day period provided in subsection (3) if, in the department's discretion, the department determines that removal would be in the public interest.

(6) Placement on the forced labor vendor list does not affect any rights or obligations under any contract, franchise, or other binding agreement which predate such placement.

(7) Any fines collected under this section shall be deposited into the General Revenue Fund.

Section 2. This act shall take effect July 1, 2024.

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 Fiscal Policy

BILL:	CS/HB 1317
INTRODUCER:	Choice & Innovation Subcommittee and Representative Duggan and others
SUBJECT:	Patriotic Organizations
DATE:	February 26, 2024
REVISED:	2/28/24

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palazesi	Yeatman	FP	**Fav/1 amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Amendments were recommended

I. Summary:

CS/HB 1317 authorizes school districts to provide patriotic organizations with specified access to K-12 public schools. The bill provides that schools may provide support and facilitate the engagement of certain patriotic organizations in schools, allowing them to interact with students during school hours, subject to parental notification, distribute instructional materials, and use school facilities if such activities occur outside of the school day.

The bill is effective July 1, 2024.

II. Present Situation:

Federally Designated Patriotic Organizations

In the United States, the states have generally had the authority to create and oversee corporate entities within their boundaries. However, Congress periodically has passed legislation to incorporate both public and private organizations. Broadly speaking, the term "congressional charter" can be understood to include any statute that establishes a new organization or gives legal recognition to an existing organization.[1]

[1] Congressional Research Service, *Title 36 Congressional Charters* (Nov. 15, 2021), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11972/2, at 1.

Patriotic, fraternal, or charitable corporate entities are a group that consists of 80-plus corporate entities whose charters comprise Title 36 of the United States Code, subtitles II and III.[2] A patriotic organization is not business corporations, it is considered "federally chartered corporation" or a "body corporate politic," and the granting of a federal charter is viewed as a mark of prestige.[3]

A charter under Title 36 does not inherently establish an organization as a federal agency, confer upon it any governmental authority, or assign it any governmental benefits. Organizations with such charters do not typically, by virtue of their chartered status, receive appropriated funds, nor are they prevented from receiving such funds, unless such a prohibition is provided for in the charter.[4]

Federally designated patriotic and national organizations that serve young people under the age of 21 include the following organizations:

- Big Brothers—Big Sisters of America.[5]
- Boy Scouts of America.[6]
- Boys & Girls Clubs of America.[7]
- Civil Air Patrol.[8]
- Future Farmers of America.[9]
- Girl Scouts of the United States of America.[10]

Additional examples of federally designated patriotic organizations include:

- Agricultural Hall of Fame.[11]
- Blue Star Mothers of America, Inc.[12]
- Disabled American Veterans.[13]
- National Academy of Sciences.[14]
- United States Olympic and Paralympic committee.[15]

[2] Office of the General Counsel, United State General Accountability Office, *Principles of Federal Appropriations Law - Third Edition*, 15 GAO-RB pt. B, s. 2 (2015).
[3] Office of the General Counsel, United State General Accountability Office, *Principles of Federal Appropriations Law - Third Edition*, 15 GAO-RB pt. B, s. 2 (2015).
[4] Congressional Research Service, *Title 36 Congressional Charters* (Nov. 15, 2021), *available at* https://crsreports.congress.gov/product/pdf/IF/IF11972/2, at 1.
[5] 36 U.S.C. s.30101.
[6] 36 U.S.C. s.30901.
[7] 36 U.S.C. s.31101.
[8] 36 U.S.C. s.40301.
[9] 36 U.S.C. s.70901.
[10] 36 U.S.C. s.80301.
[11] 36 U.S.C. s.20101.
[12] 36 U.S.C. s.30501.
[13] 36 U.S.C. s.50301.
[14] 36 U.S.C. s.150301.
[15] 36 U.S.C. s.220501.

School Visitation

District school boards are vested with the authority to operate, control, and supervise all free public schools within the school district, and may exercise any power except as expressly prohibited by the State Constitution or general law.[16] District school boards must provide for proper attention to health, safety, and other matters relating to the welfare of students.[17]

Florida law does not generally regulate individuals not employed by a school district who may visit a school campus, such as parents or volunteers. District school boards establish policies and procedures to for such individuals to ensure student safety. However, Florida law does require a noninstructional contractor, who is not considered an employee of the school district, to undergo a fingerprint-based criminal history check,[18] with certain exceptions specified in law.[19] In addition, a district school board member or member of the Legislature is authorized in law to visit any public school in that county or legislative district. While such individuals must sign in and out of the school, no advance notice is necessary, the school may offer, but not require, an escort, and an employee may not limit the scope or duration of the visit.[20]

III. Effect of Proposed Changes:

The bill creates s. 1001.433, F.S., and defines the term "patriotic organization" as a youth membership organization serving young people under the age of 21 that is listed in specified sections of Title 36, U.S.C., as it existed on January 1, 2020, with an educational purpose that promotes patriotism and civic involvement.

The bill authorizes a school district to:

- Allow a representative of a patriotic organization the opportunity, during school hours and instructional time, to speak with and distribute informational materials in a classroom setting to students to encourage participation in the patriotic organization and its activities and inform students of how the patriotic organization may further the students' educational interests and civic involvement to better the students' school and community and themselves.
- Provide opportunities for a patriotic organization to have displays at schools within the district to provide opportunities for student recruitment. Such displays may include informational flyers and the use of other existing communication channels.

The bill requires that if a school district authorizes a representative of a patriotic organization to speak with students the school district must:

- Provide a specific date and time for the patriotic organization to speak to students at schools within the district after the patriotic organization has provided reasonable notice of its intent to speak to students and provide displays.
- Notify parents or guardians of each patriotic organization's expected presentation and the option to withhold consent for their child participating in such presentation.

[16] Fla Const. Art. IX, s. 4(b). See also s. 1001.32(2), F.S.
[17] Section 1006.07, F.S.
[18] Section 1021.467(1) and (2), F.S.
[19] *See* s. 1012.468, F.S.
[20] Section 1001.4205, F.S.

The bill requires that a school district may not discriminate against a patriotic organization in the use of any school building or property, if the patriotic organization's activities occur outside of the school day.

Additionally, the bill specifies that a school district that allows a patriotic organization to speak with and distribute informational materials to students or use school buildings or property is not required to provide equal access to an organization that is not designated as a patriotic organization.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1001.433 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:

Barcode 231634 by Fiscal Policy on February 27, 2024:
Senate amendment barcode 231634:

- Defines a patriotic organization as a youth membership organization specified in federal law that serves young people under the age of 21.
- Authorizes school districts to allow representatives of patriotic organizations to speak and distribute materials during school hours or place displays at schools; but requires that if a school district authorizes a patriotic organization to be on campus, the school district must notify parents and must allow for a parent to withhold consent from the presentation.
- Specifies that a school district may not discriminate against a patriotic organization in the use of any school building or property if the activities occur outside of the school day.
- Specifies that a school that allows a patriotic organization on campus is not required to provide equal access to an organization that is not designated as a patriotic organization.

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

231634

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2024	.	
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	.	
	.	

The Committee on Fiscal Policy (Wright) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1001.433, Florida Statutes, is created to read:

1001.433 Patriotic organizations.—

(1) As used in this section, the term "patriotic organization" means a youth membership organization serving young people under the age of 21 which is listed in Title 36,

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U.S.C., as it existed on January 1, 2020, with an educational purpose that promotes patriotism and civic involvement.

(2)(a) Each school district may:

1. Allow a representative of a patriotic organization the opportunity, during school hours and instructional time, to speak with and distribute informational materials in a classroom setting to students, to encourage participation in the patriotic organization and its activities, and to inform students of how the patriotic organization may further the students' educational interests and civic involvement and better the students' school and community and themselves.

2. Provide opportunities for a patriotic organization to provide displays at schools within the district for student recruitment. Such displays may include informational flyers and the use of other existing communication channels.

(b) If a school district authorizes a representative of a patriotic organization to speak with and distribute informational materials to students and provide displays pursuant to paragraph (a), the school district:

1. Must provide a specific date and time for the patriotic organization to speak to students at schools within the district after the patriotic organization has provided reasonable notice of its intent to speak to students and provide displays.

2. Must notify parents or guardians of each patriotic organization's expected presentation and the option to withhold consent for their child participating in such presentation.

(3) A school district may not discriminate against an organization in subsection (1) in the use of any school building or property for the purposes of paragraphs (2)(a) and (b), if

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such activities occur outside of the school day.

(4) A school district that allows a patriotic organization to speak with and distribute informational materials to students or use school buildings or property pursuant to this section is not required to provide equal access to an organization that is not designated as a patriotic organization.

Section 2. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to patriotic organizations; creating s. 1001.433, F.S.; defining the term "patriotic organization"; authorizing school districts to allow representatives of patriotic organizations to speak to students, distribute certain materials, and provide opportunities for certain displays relating to the patriotic organizations; requiring certain school districts to provide a date and time for such patriotic organizations to speak with students, distribute materials, and provide certain displays; specifying certain requirements if a school district allows a patriotic organization to present at the school; prohibiting a school district from discriminating against certain organizations in the use of a school building or property under certain circumstances; authorizing patriotic organizations to

231634

be provided certain access to school buildings and properties under certain circumstances; providing construction; providing an effective date.

A bill to be entitled

An act relating to patriotic organizations; creating s. 1001.433, F.S.; defining the term "patriotic organization"; authorizing school districts to allow representatives of patriotic organizations certain opportunities to speak to students, distribute certain materials, and provide certain displays relating to the patriotic organizations; requiring certain school districts to provide the date and time for such patriotic organizations to speak with students, distribute such materials, and provide certain displays; authorizing patriotic organizations to be provided certain access to school buildings and properties under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Section 1001.433, Florida Statutes, is created to read:

1001.433 Patriotic Organizations.—

(1) As used in this section, the term "patriotic organization" means a youth membership organization serving young people under the age of 21 that is listed in Title 36, U.S.C. ss. 30101, 30901, 31101, 40301, 70901, and 80301, as it existed on January 1, 2020, with an educational purpose that promotes patriotism and civic involvement.

(2)(a) Each school district may:

1. Allow a representative of a patriotic organization the opportunity, during school hours and instructional time, to speak with and distribute informational materials in a classroom setting to students to encourage participation in the patriotic organization and its activities and inform students of how the patriotic organization may further the students' educational interests and civic involvement to better the students' school and community and themselves.

2. Provide opportunities for a patriotic organization to have displays at schools within the district to provide opportunities for student recruitment. Such displays may include informational flyers and the use of other existing communication channels.

(b) If a school district authorizes a representative of a patriotic organization to speak with and distribute informational materials to students and provide displays pursuant to paragraph (a), the school district must provide a specific day and time for the patriotic organization to speak to students at schools within the district after the patriotic organization has provided reasonable notice of its intent to speak to students and provide displays.

(3) A patriotic organization may be allowed the use of any

school building or property for the purposes of paragraphs (2)(a) and (b), if such activities occur outside of the school day.

(4) A school district that allows a patriotic organization to speak with and distribute informational materials to students or use school buildings or property pursuant to this section is not required to provide equal access to an organization that is not designated as a patriotic organization.

Section 2. This act shall take effect July 1, 2024.

231634

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2024	.	
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231634

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(b) If a school district authorizes a representative of a patriotic organization to speak with and distribute informational materials to students and provide displays pursuant to paragraph (a), the school district:

1. Must provide a specific date and time for the patriotic organization to speak to students at schools within the district after the patriotic organization has provided reasonable notice of its intent to speak to students and provide displays.

2. Must notify parents or guardians of each patriotic organization's expected presentation and the option to withhold consent for their child participating in such presentation.

(3) A school district may not discriminate against an organization in subsection (1) in the use of any school building or property for the purposes of paragraphs (2)(a) and (b), if

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such activities occur outside of the school day.

(4) A school district that allows a patriotic organization to speak with and distribute informational materials to students or use school buildings or property pursuant to this section is not required to provide equal access to an organization that is not designated as a patriotic organization.

Section 2. This act shall take effect July 1, 2024.

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231634

be provided certain access to school buildings and properties under certain circumstances; providing construction; providing an effective date.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2-27-2024
Meeting Date

Fiscal Policy
Committee

HB 1317
Bill Number or Topic

Amendment Barcode (if applicable)

Name Scott Howat

Phone 407-317-3200

Address 445 W. Amelia St.
Street

Email scott.howat@ocps.net

Orlando FL 32801
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Orange County Public Schools

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Committee on Fiscal Policy **Judge:**

Started: 2/27/2024 9:03:50 AM
Ends: 2/27/2024 2:40:31 PM **Length: 05:36:42**

9:03:51 AM Chair Hutson calls meeting to order
9:03:56 AM Roll call
9:03:57 AM Quorum is present
9:04:30 AM Pledge of Allegiance
9:04:58 AM Tab 1, CS/SB 24 on School Victim Compensation Program by Rouson
9:05:46 AM Senator Rouson explains the bill
9:06:44 AM Amendment #825836 by Rouson
9:06:55 AM Senator Rouson explains the amendment
9:07:12 AM Chair Hutson reports the amendment
9:07:30 AM Chair Hutson recognizes public appearances:
9:07:40 AM Troy Rafferty
9:10:20 AM Ralph Freeman
9:16:50 AM Cecil Gardner
9:20:56 AM Charles Fudge
9:24:22 AM Debate:
9:24:32 AM Senator Osgood
9:26:45 AM Senator Boyd
9:28:40 AM Senator Thompson
9:31:38 AM Senator Rouson closes on the bill
9:32:11 AM Roll call
9:32:38 AM Tab 2, CS/CS/SB 26 on Public Records by Rouson
9:33:09 AM Senator Rouson explains the bill
9:33:22 AM Chair Hutson recognizes public appearance
9:34:03 AM Roll call
9:34:42 AM Tab 11, SB 958 on Local Government Employees by Martin
9:34:56 AM Senator Martin explains the bill
9:35:47 AM Senator Martin waives close
9:35:50 AM Roll call
9:36:22 AM Tab 15, SB 1220 on Schemes to Defraud by Martin
9:36:37 AM Senator Martin explains the bill
9:37:07 AM Senator Martin waives close
9:37:12 AM Roll call
9:37:43 AM Tab 17, SB 1256 on Voter Registration Applications by Martin
9:37:55 AM Senator Martin explains the bill
9:38:16 AM Amendment #949112 by Martin
9:38:32 AM Senator Martin explains the amendment
9:39:11 AM Questions
9:39:15 AM Senator Thompson
9:39:17 AM Senator Martin
9:39:28 AM Chair Hutson reports the amendment
9:39:34 AM Senator Martin waives close
9:39:52 AM Roll call
9:40:27 AM Tab 31, CS/SB 1656 on Child Exploitation Offenses
9:40:47 AM Amendment #722368 by Martin
9:40:56 AM Senator Martin explains the bill and amendment
9:41:42 AM Amendment to the amendment #133040 by Jones
9:41:57 AM Amendment to the amendment #133040 withdrawn
9:42:13 AM Chair Hutson recognizes public appearance
9:42:22 AM John Harris Maurer, Equality Florida
9:43:28 AM Chair Hutson reports the amendment
9:43:40 AM Chair Hutson recognizes public appearance on the bill
9:43:49 AM Ron Book, Lauren's Kids Foundations

9:48:34 AM Jonathan Gonzalez
9:50:32 AM Senator Martin waives close
9:50:42 AM Roll call
9:51:16 AM Tab 19, CS/SB 1360 on Florida Red Tide Mitigation by Gruters
9:51:35 AM Senator Gruters explains the bill
9:52:25 AM Senator Gruters waives close
9:52:31 AM Roll call
9:53:06 AM Tab 23 SB 1448 on Transparency in Social Media by Gruters
9:53:30 AM Senator Gruters explains the bill
9:54:24 AM Senator Gruters waives close
9:54:29 AM Roll call
9:55:00 AM Tab 12, CS/CS/SB 1006 on Nicotine Products by Perry
9:55:25 AM Senator Perry explains the bill
9:56:06 AM Questions:
9:56:09 AM Senator DiCeglie
9:56:47 AM Senator Perry
9:57:22 AM Senator Rodriguez
9:57:56 AM Senator Perry
9:58:49 AM Senator Rodriguez
9:59:21 AM Chair Hutson recognizes public appearances:
9:59:47 AM Amanda Risteen
10:00:35 AM Jonathan Risteen
10:02:20 AM Trevor Campbell
10:03:42 AM Questions
10:03:49 AM Senator Burton
10:04:14 AM Trevor Campbell
10:05:00 AM Chair Hutson
10:05:40 AM Lindsey Stroud, Taxpayers Protection Alliance
10:07:28 AM Joseph Carco
10:08:59 AM Dan Marlin
10:10:28 AM Nikki Morenghi
10:11:23 AM Baha Kasem
10:12:58 AM Questions:
10:13:06 AM Senator Burton
10:13:39 AM Baha Kasem
10:14:03 AM Senator Burton
10:14:16 AM Baha Kasem
10:14:41 AM Senator Burton
10:15:02 AM Baha Kasem
10:16:19 AM Jean O'Shaughnessy
10:16:48 AM Gary Eliasov-Hodes
10:18:46 AM Houston Blackwell
10:19:44 AM Shaun Province
10:21:11 AM Angela Weatherholt
10:22:24 AM Ayrran Faggouseh
10:23:55 AM Ernesto Fragoso
10:26:38 AM Questions:
10:26:41 AM Senator Burton
10:27:40 AM Ernesto Fragoso
10:28:58 AM Senator Burton
10:29:46 AM Ernesto Fragoso
10:29:53 AM Nick Orlando
10:31:30 AM Jonathan Gonzalez
10:35:02 AM John Guard, FL Attorney General's Office
10:37:31 AM Debate:
10:37:34 AM Senator Burton
10:39:00 AM Senator Perry closes on the bill
10:40:14 AM Roll call
10:40:47 AM Reported favorably
10:40:52 AM Tab 14 CS/CS/SB 1178 by Senator Bradley
10:41:03 AM Take up the delete all amendment #863108
10:41:20 AM Senator Bradley recognized to explain the delete all amendment

10:42:40 AM Take up the amendment to the amendment barcode #595242
10:43:01 AM Senator Bradley recognized to explain the amendment to the amendment
10:43:23 AM Public testimony recognized
10:43:50 AM Amendment to the amendment adopted
10:43:55 AM Back on the delete all amendment
10:44:05 AM Public testimony from Jonathan Gonzalez
10:52:50 AM Debate:
10:52:53 AM Senator Berman
10:54:03 AM Chair Hutson recognizes public appearance
10:54:26 AM Debate:
10:54:29 AM Senator DiCeglie
10:55:26 AM Senator Jones
10:56:25 AM Senator Boyd
10:57:00 AM Senator Bradley closes on the bill
10:57:52 AM Roll call
10:58:40 AM Tab 21, CS/SB 1432 on Commercial Sexual Exploitation of Children by Book
10:59:03 AM Senator Book explains the bill
11:00:32 AM Senator Book waives close
11:00:38 AM Roll call
11:01:12 AM Tab 10, SB 732 on Theft from Nonprofit Organizations by Powell
11:01:31 AM Senator Powell explains the bill
11:02:58 AM Senator Powell waives close
11:03:03 AM Roll call
11:03:34 AM Tab 22, CS/SB 1436 on Consumer Finance Loans by Burton
11:03:49 AM Senator Burton explains the bill
11:05:07 AM Questions:
11:05:09 AM Senator Jones
11:05:22 AM Senator Burton
11:06:02 AM Senator Jones
11:06:30 AM Senator Burton
11:07:25 AM Senator Jones
11:07:45 AM Senator Burton
11:08:20 AM Senator Jones
11:08:44 AM Senator Burton
11:08:59 AM Senator Jones
11:09:03 AM Senator Burton
11:09:51 AM Senator Berman
11:10:19 AM Senator Burton
11:10:27 AM Senator Berman
11:10:40 AM Senator Burton
11:11:00 AM Senator Berman
11:11:13 AM Senator Burton
11:11:29 AM Senator Thompson
11:11:44 AM Senator Burton
11:12:06 AM Senator Thompson
11:12:14 AM Senator Burton
11:12:47 AM Karen Woodall, FL Center for Fiscal and Economic Security
11:15:49 AM Tammy Fecci, Florida Conference of Catholic Bishops
11:18:47 AM Scott Jenkins, Florida Financial Services Association
11:22:55 AM Dr. Russell Myer
11:25:26 AM Debate:
11:25:30 AM Senator Berman
11:27:38 AM Senator Burton closes on the bill
11:29:41 AM Roll call
11:30:17 AM Tab 34, SB 1784 on Mental Health and Substance Abuse by Grall
11:30:39 AM Amendment #132348 by Grall
11:30:54 AM Senator Grall explains the bill and amendment
11:33:12 AM Chair Hutson reports the amendment
11:33:25 AM Senator Grall waives close
11:33:31 AM Roll call
11:34:15 AM Tab 4, SB 436 on Pregnancy and Parenting Resources Website by Grall
11:34:33 AM Senator Grall explains the bill

11:35:00 AM Questions:
11:35:04 AM Senator Berman
11:35:14 AM Senator Grall
11:35:35 AM Senator Berman
11:35:45 AM Senator Grall
11:36:14 AM Senator Berman
11:36:24 AM Senator Grall
11:37:13 AM Senator Berman
11:37:27 AM Senator Grall
11:37:54 AM Senator Berman
11:38:03 AM Senator Grall
11:38:36 AM Senator Berman
11:39:09 AM Senator Grall
11:39:56 AM Dr. Joan Waykovich
11:42:28 AM Debate:
11:42:34 AM Senator Berman
11:43:43 AM Senator Stewart
11:44:22 AM Senator Grall closes on the bill
11:46:22 AM Roll call
11:47:04 AM Tab 35, CS/SB 7042 on Commodities Produced by Forced Labor by Avila
11:47:26 AM Senator Avila explains the bill
11:48:03 AM Amendment #368128 by Avila
11:48:12 AM Senator Avila explains the amendment
11:48:39 AM Chair Hutson reports the amendment
11:48:50 AM Questions:
11:48:58 AM Senator Thompson
11:49:09 AM Senator Avila
11:49:36 AM Senator Thompson
11:49:56 AM Senator Berman
11:50:15 AM Senator Avila
11:50:48 AM Senator Berman
11:51:07 AM Senator Avila
11:51:47 AM Senator Berman
11:52:00 AM Senator Avila
11:52:34 AM Senator Berman
11:53:07 AM Senator Avila
11:53:23 AM Senator Avila closes on the bill
11:54:05 AM Roll call
11:54:42 AM Tab 7, SB 590 on Music-based Supplemental Content by Burgess
11:55:11 AM Senator Burgess explains the bill
11:55:46 AM Senator Burgess waives close
11:55:51 AM Roll call
11:56:36 AM Tab 26, CS/CS/SB 1582 on Department of Health by Rodriguez
11:56:53 AM Senator Rodriguez explains the bill
11:57:11 AM Amendment #922552 by Rodriguez
11:57:23 AM Senator Rodriguez explains the amendment
11:57:52 AM Chair Hutson reports the amendment
11:58:08 AM Senator Rodriguez waives close
11:58:28 AM Roll call
11:59:08 AM Tab 24, SB 1464 on Traffic Enforcement by Calatayud
11:59:20 AM Senator Calatayud explains the bill
11:59:56 AM Amendment #575736 by Calatayud
12:00:15 PM Senator Calatayud explains the amendment
12:00:43 PM Chair Hutson reports the amendment
12:00:52 PM Senator Calatayud waives close
12:01:03 PM Roll call
12:01:42 PM Tab 36, CS/HB 1317 on Patriotic Organizations by Duggan
12:02:27 PM Senator Wright explains the bill
12:02:55 PM Amendment #231634 by Wright
12:03:08 PM Senator Wright explains the amendment
12:03:20 PM Questions:
12:03:23 PM Senator Stewart

12:03:28 PM Senator Wright
12:03:30 PM Chair Hutson reports the amendment
12:03:44 PM Senator Wright waives close
12:03:50 PM Roll call
12:04:41 PM Tab 13, CS/SB 1036 on Reclassification of Criminal Penalties by Ingoglia
12:05:03 PM Senator Ingoglia explains the bill
12:05:43 PM Amendment #269496 by Ingoglia
12:06:17 PM Senator Ingoglia explains the amendment
12:06:45 PM Amendment to the amendment #360462
12:07:42 PM Senator Ingoglia explains the amendment
12:07:54 PM Chair Hutson reports the amendment
12:08:11 PM Substitute Amendment #350306 by Ingoglia
12:08:24 PM Senator Ingoglia explains the substitute amendment
12:08:58 PM Chair Hutson recognizes public appearance
12:09:17 PM Jack Campbell, State Attorney
12:11:15 PM Senator Torres
12:12:24 PM Jack Campbell
12:12:28 PM Senator Torres
12:12:34 PM Jack Campbell
12:13:11 PM Chair Hutson reports the amendment
12:13:21 PM Questions:
12:13:29 PM Senator Thompson
12:13:34 PM Senator Ingoglia
12:14:09 PM Senator Thompson
12:14:30 PM Senator Ingoglia
12:14:44 PM Senator Thompson
12:14:48 PM Senator Ingoglia
12:14:53 PM Senator Thompson
12:14:58 PM Senator Ingoglia
12:15:39 PM Senator Thompson
12:15:54 PM Senator Ingoglia
12:16:41 PM Debate:
12:16:45 PM Senator Mayfield
12:18:17 PM Senator Wright
12:18:46 PM Senator Thompson
12:19:42 PM Senator Ingoglia closes on the bill
12:19:51 PM Roll call
12:20:26 PM Tab 5, CS/CS/SB 536 on Child Welfare Agencies
12:20:46 PM Amendment #736738 by Garcia
12:21:04 PM Senator Garcia explains the bill and amendment
12:23:07 PM Public Appearance
12:23:24 PM Leslie Veiga, Citrus Health Network
12:24:41 PM Chair Hutson reports the amendment
12:24:50 PM Senator Garcia waives close
12:25:40 PM Roll call
12:25:56 PM Tab 6, CS/SB 564 on Young Adult Aftercare Services by Garcia
12:26:28 PM Senator Garcia explains the bill
12:26:37 PM Amendment #645594 by Garcia
12:26:48 PM Senator Garcia explains the amendment
12:27:43 PM Questions:
12:27:57 PM Senator Berman
12:28:15 PM Senator Garcia
12:28:33 PM Chair Hutson reports the amendment
12:28:45 PM Chair Hutson recognizes public appearance
12:28:57 PM Alexia Nechayey
12:32:38 PM Senator Garcia closes on the bill
12:32:49 PM Roll call
12:33:31 PM Tab 8 SB 602 by Senator DiCeglie
12:33:41 PM Senator DiCeglie recognized to explain the bill
12:33:48 PM The gavel is passed to Senator Stewart
12:33:57 PM Senator Hutson is recognized to explain the amendment barcode #624736
12:34:45 PM Debate recognized, public testimony recognized

12:34:50 PM Senator Hutson recognized to close on the amendment
12:35:11 PM Amendment adopted
12:35:14 PM Gavel is passed back to Senator Hutson
12:35:43 PM Senator DiCeglie recognized to waive close on the amended bill
12:35:54 PM Roll call
12:36:24 PM Tab 16 CS/CS/SB 1226 by Senator DiCeglie
12:36:36 PM Senator DiCeglie is recognized to explain the bill
12:37:24 PM Amendment barcode #584592
12:37:37 PM Senator DiCeglie is recognized to explain the amendment
12:38:12 PM Take up amendment to the amendment #525088
12:38:26 PM Senator DiCeglie is recognized to explain the amendment
12:38:59 PM Amendment to the amendment adopted
12:39:19 PM Amendment adopted
12:39:26 PM Senator Berman is recognized for question on the bill as amended
12:39:38 PM Back and forth recognized
12:41:07 PM Public testimony recognized
12:41:13 PM Senator DiCeglie is recognized to waive close on the bill as amended
12:41:26 PM Roll call
12:41:47 PM Reported favorably
12:42:05 PM Gavel is passed to Senator Mayfield
12:42:13 PM Tab 9 CS/CS/SB 718 by Senator Collins
12:42:34 PM Take up amendment barcode #936092
12:43:29 PM Public testimony recognized
12:43:37 PM Senator Collins recognized to waive close on the amendment
12:43:49 PM Amendment adopted
12:43:52 PM Senator Berman recognized for question
12:44:38 PM Senator Collins is recognized to answer
12:45:53 PM Back and forth
12:47:16 PM Public testimony from Aurelie Colon, SPLC Action Fund
12:48:33 PM Public testimony from Corporal Robert Palmer, Collier County Sheriff's Office
12:53:42 PM Public testimony from Dr. Joan
12:55:59 PM Public testimony recognized
12:56:38 PM Senator Torres recognized for debate
12:58:39 PM Senator Collins is recognized to waive close on the bill as amended
1:00:24 PM Roll call
1:01:01 PM Reported favorably
1:01:05 PM Tab 18 CS/CS/SB 1264 by Senator Collins
1:01:17 PM Senator Collins is recognized to explain the bill
1:01:54 PM Senator Berman is recognized for question
1:02:12 PM Senator Collins is recognized for answer
1:02:54 PM Back and forth
1:09:31 PM Public testimony from Dr. Joan
1:12:49 PM Public testimony from John Labriola
1:15:32 PM Public testimony from Shirley Herman
1:17:37 PM Public testimony recognized
1:17:45 PM Senator Osgood is recognized for debate
1:20:45 PM Senator Thompson is recognized for debate
1:22:16 PM Senator Torres is recognized for debate
1:24:37 PM Senator Calatayud is recognized for debate
1:26:57 PM Senator Berman is recognized for debate
1:29:40 PM Senator Collins is recognized to waive close on the bill
1:33:41 PM Roll call
1:34:06 PM Reported favorably
1:34:20 PM Tab 25 CS/CS/SB 1486 by Senator Collins
1:34:36 PM Senator Collins is recognized to explain the bill
1:35:20 PM Public testimony recognized
1:35:26 PM Senator Collins is recognized to waive close
1:35:35 PM Roll call
1:36:16 PM Tab 27, SB 1600 on Interstate Mobility by Collins
1:36:29 PM Senator Collins explains the bill
1:36:51 PM Amendment #947360 by Collins
1:37:00 PM Senator Collins explains the amendment

1:37:55 PM Questions on the amendment:
1:37:59 PM Senator Berman
1:38:18 PM Senator Collins
1:38:33 PM Senator Berman
1:38:39 PM Senator Collins
1:39:06 PM Senator Berman
1:39:46 PM Senator Collins
1:39:59 PM Senator Berman
1:40:11 PM Senator Collins
1:40:53 PM Chair Hutson recognizes public appearance
1:41:06 PM Chair Hutson reports the amendment
1:41:34 PM Chair Hutson recognizes public appearance
1:41:41 PM George Levesque, FL Chapter of the American Institute of Architects
1:43:00 PM Senator Collins closes on the bill
1:43:17 PM Roll call
1:43:52 PM Tab 29, CS/CS/SB 1624 on Energy Resources by Collins
1:44:14 PM Senator Collins explains the bill
1:45:36 PM Questions:
1:45:39 PM Senator Stewart
1:45:50 PM Senator Collins
1:46:49 PM Senator Stewart
1:47:12 PM Senator Collins
1:47:41 PM Senator Stewart
1:47:58 PM Senator Collins
1:48:32 PM Senator Jones
1:49:14 PM Senator Collins
1:50:57 PM Senator Jones
1:51:11 PM Senator Collins
1:51:29 PM Senator Jones
1:52:01 PM Senator Collins
1:52:56 PM Senator Thompson
1:53:17 PM Senator Collins
1:55:10 PM Senator Thompson
1:55:14 PM Senator Collins
1:55:18 PM Senator Thompson
1:55:31 PM Senator Collins
1:55:50 PM Senator Thompson
1:57:02 PM Senator Collins
1:57:17 PM Senator Stewart
1:57:42 PM Senator Collins
1:57:47 PM Senator Stewart
1:57:55 PM Senator Collins
1:58:12 PM Brian Lee, Rethink Energy Action Fund
1:59:12 PM Kim Ross, Rethink Energy Florida
2:01:36 PM Samantha Kaddis, GenCleo Action Fund
2:03:29 PM Libby Lavette
2:07:39 PM Debate:
2:07:43 PM Senator Berman
2:08:57 PM Senator Thompson
2:10:21 PM Senator Torres
2:11:21 PM Senator Berman
2:12:17 PM Senator Stewart
2:14:19 PM Senator Wright
2:14:47 PM Senator Collins closes on the bill
2:17:09 PM Roll call
2:17:48 PM Tab 30, SB 1640 on Payments for Health Care Services by Collins
2:18:03 PM Senator Collins explains the bill
2:18:20 PM Amendment #233008 by Collins
2:18:57 PM Senator Collins explains the amendment
2:19:16 PM Questions on the amendment:
2:19:21 PM Senator Burton
2:19:23 PM Senator Collins

2:20:09 PM Senator Burton
2:20:25 PM Senator Collins
2:21:02 PM Chair Hutson reports the amendment
2:21:31 PM Questions on the bill
2:21:36 PM Senator Burton
2:22:13 PM Senator Collins
2:22:41 PM Senator Burton
2:23:07 PM Senator Collins
2:23:51 PM Senator Collins closes on the bill
2:24:05 PM Roll call
2:24:39 PM Tab 28, CS/SB 1622 on Insurance by Trumbull
2:25:04 PM Senator Trumbull explains the bill
2:25:28 PM Amendment #199358 by Trumbull
2:25:43 PM Senator Trumbull explains the bill
2:25:53 PM Chair Hutson reports the amendment
2:26:12 PM Senator Trumbull waives close
2:26:21 PM Roll call
2:26:48 PM Tab 33, CS/SB 1716 on Citizens Property Insurance Corporation by Boyd
2:27:07 PM Senator Boyd explains the bill
2:27:33 PM Amendment #443848 by Boyd
2:27:46 PM Senator Boyd explains the amendment
2:29:03 PM Chair Hutson recognizes public appearance
2:29:24 PM Marion Brown
2:30:47 PM Chair Hutson reports the amendment
2:30:53 PM Amendment #302782 by Rodriguez
2:31:14 PM Senator Rodriguez explains the amendment
2:31:48 PM Senator Rodriguez closes on the amendment
2:32:14 PM Chair Hutson reports the amendment
2:32:31 PM Senator Boyd closes on the bill
2:33:05 PM Roll call
2:33:46 PM Chair Hutson passes the gavel to vice chair Stewart
2:34:05 PM Tab 20, CS/CS/SB 1380 on Transportation Services for the Persons with Disabilities by Hutson
2:34:32 PM Senator Hutson explains the bill
2:34:56 PM Chair Hutson waives close
2:35:05 PM Roll call
2:35:33 PM Vice Chair Stewart passes the gavel back to Chair Hutson
2:36:16 PM Senator Torres moves to be recorded
2:36:25 PM Senator Simon moves to be recorded
2:36:37 PM Senator Thompson moves to be recorded
2:36:49 PM Senator Burton moves to be recorded
2:37:02 PM Senator DiCeglie moves to be recorded
2:37:09 PM Senator Garcia moves to be recorded
2:37:22 PM Senator Osgood moves to be recorded
2:37:39 PM Senator Jones moves to be recorded
2:37:50 PM Senator Stewart moves to be recorded
2:37:57 PM Senator Mayfield moves to be recorded
2:38:07 PM Senator Wright moves to be recorded
2:38:22 PM Senator Boyd makes closing remarks
2:38:51 PM Senator Boyd moves to be recorded
2:39:03 PM Senator Yarborough moves to be recorded
2:39:12 PM Senator Rodriguez makes closing remarks
2:39:21 PM Senator Rodriguez moves to be recorded
2:39:32 PM Senator Calatayud moves to be recorded
2:39:40 PM Senator Trumbull moves to be recorded
2:40:03 PM Chair Hutson makes closing remarks
2:40:13 PM Senator Wright moves to adjourn
2:40:21 PM Meeting adjourned