

Tab 1	SB 102 by Burgess; (Identical to H 01053) Attorney General Designation of Matters of Great Governmental Concern					
260332	D	S	RCS	CA, Burgess	Delete everything after	04/01 11:53 AM
Tab 2	CS/SB 268 by RI, Perry; (Identical to H 00735) Preemption of Local Occupational Licensing					
Tab 3	SB 518 by Diaz; (Identical to H 00433) Drones					
Tab 4	SB 694 by Rodrigues (CO-INTRODUCERS) Perry; (Similar to CS/H 00331) Displacement of Private Waste Companies					
131904	A	S		CA, Polsky	Before L.17:	03/29 02:47 PM
314954	SA	S	RCS	CA, Polsky	Before L.17:	03/31 03:18 PM
Tab 5	CS/SB 844 by GO, Hooper; (Similar to CS/H 00781) Public Records					
940972	D	S	RCS	CA, Hooper	Delete everything after	03/31 04:39 PM
Tab 6	CS/SB 1070 by JU, Berman; (Similar to H 00609) Estates and Trusts					
516430	A	S	RCS	CA, Berman	Delete L.379:	03/31 04:39 PM
Tab 7	CS/SB 1076 by GO, Brodeur; (Compare to CS/CS/H 00053) Public Works Projects					
801090	A	S	RCS	CA, Brodeur	Delete L.17 - 97:	04/01 01:46 PM
283798	AA	S	WD	CA, Hooper	Delete L.43 - 72:	04/01 01:46 PM
Tab 8	SB 1146 by Brodeur; (Similar to CS/H 00401) Florida Building Code					
967590	A	S	RCS	CA, Brodeur	Delete L.30 - 307:	04/01 04:29 PM
Tab 9	SB 1274 by Perry; (Compare to H 00487) Growth Management					
585848	A	S	L RCS	CA, Perry	Delete L.29:	03/31 03:18 PM
Tab 10	SB 1330 by Rodriguez (CO-INTRODUCERS) Garcia; (Compare to CS/H 00571) Ad Valorem Tax Exemption for Nonprofit Homes for the Aged					
358362	A	S	RCS	CA, Rodriguez	Delete L.29 - 55.	04/01 12:12 PM
Tab 11	CS/SB 1520 by JU, Boyd; (Identical to CS/H 01139) Ancillary Property Rights					
Tab 12	SB 1584 by Gruters; (Similar to CS/H 00623) Taxation of Real Property Platform Transactions					
782478	A	S	RCS	CA, Gruters	Delete L.16 - 46:	04/01 09:57 AM
Tab 13	CS/SB 1876 by JU, Albritton; (Compare to H 00421) Relief from Burdens on Real Property Rights					
Tab 14	SB 1944 by Albritton; (Similar to CS/H 01567) Utility and Communications Poles					
Tab 15	CS/SB 1946 by EN, Polsky (CO-INTRODUCERS) Bean; (Identical to CS/H 01515) Anchoring Limitation Areas					
654046	A	S	RCS	CA, Polsky	Delete L.36:	03/31 03:18 PM

Tab 16 SB 2008 by Diaz; (Similar to CS/CS/H 01429) Tourist and Convention Development Taxes						
285024	D	S	CA, Diaz	Delete everything after	03/29 10:54 AM	
905544	AA	S	CA, Diaz	btw L.681 - 682:	03/29 12:21 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bradley, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, March 30, 2021
TIME: 3:30—6:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Bradley, Chair; Senator Garcia, Vice Chair; Senators Baxley, Brodeur, Cruz, Hooper, Hutson, Polsky, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE 32301

1	SB 102 Burgess (Identical H 1053, Compare S 1874)	Attorney General Designation of Matters of Great Governmental Concern; Authorizing the Attorney General to declare that a matter is a matter of great governmental concern; providing that the Attorney General has the sole authority to file certain civil proceedings; providing that a declaration by the Attorney General that a matter is a matter of great governmental concern abates or stays certain civil proceedings; providing that certain declarations do not constitute final agency action subject to review, etc. CA 03/30/2021 Fav/CS AP RC	Fav/CS Yeas 5 Nays 4
2	CS/SB 268 Regulated Industries / Perry (Identical H 735)	Preemption of Local Occupational Licensing; Preempting licensing of occupations to the state; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; authorizing counties and municipalities to issue certain journeyman licenses, etc. RI 03/16/2021 Fav/CS CA 03/30/2021 Favorable RC	Favorable Yeas 6 Nays 3
3	SB 518 Diaz (Identical H 433, Compare CS/H 1049, CS/CS/S 44)	Drones; Expanding the authorized uses of drones by a state agency or political subdivision to include the assessment of damage due to natural disasters, etc. MS 03/09/2021 Favorable CA 03/30/2021 Favorable RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 30, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 694 Rodrigues (Similar CS/H 331)	Displacement of Private Waste Companies; Requiring a local government to pay a specified amount of compensation to a displaced private waste company at the end of a specified notice period; removing a provision authorizing a local government to pay a specified amount of compensation to a private waste company as an alternative to delaying displacement for a specified period; removing a provision authorizing a local government and private waste company to negotiate such compensation and notice, etc. EN 02/15/2021 Favorable CA 03/30/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0
5	CS/SB 844 Governmental Oversight and Accountability / Hooper (Similar CS/H 781)	Public Records; Prohibiting a county recorder from removing a grantor name, grantee name, or party name from the index on the publicly available website unless the information is subject to a specified public records exemption; prescribing requirements for a person claiming a public records exemption to request removal of information from a publicly available website; requiring that a request for maintenance of an exemption be notarized and confirm the individual's status; requiring the daily schedule of deeds and conveyances to include notification of any information therein which is subject to a request for removal, etc. GO 02/17/2021 Not Considered GO 03/03/2021 Fav/CS CA 03/30/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0
6	CS/SB 1070 Judiciary / Berman (Similar H 609)	Estates and Trusts; Requiring the court to allow an officer to elect to post and maintain a certain bond; providing that certain provisions of a will are void upon dissolution of marriage; creating the "Florida Uniform Directed Trust Act"; specifying that trustees and trust directors do not have a duty to monitor, inform, or advise specified persons under certain circumstances; creating the "Community Property Trust Act"; providing that certain property held in a community property trust qualifies as homestead property, etc. JU 03/22/2021 Fav/CS CA 03/30/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 30, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1076 Governmental Oversight and Accountability / Brodeur (Compare CS/CS/H 53)	Public Works Projects; Revising a prohibition relating to any solicitation for construction services paid for with state or locally appropriated funds; revising the definition of the term "public works project"; prohibiting the state or any political subdivision that contracts for a public works project from taking specified action against certain persons that are engaged in a public works project or have submitted a bid for such a project, etc. GO 03/10/2021 Fav/CS CA 03/30/2021 Fav/CS RC	Fav/CS Yeas 6 Nays 3
8	SB 1146 Brodeur (Similar CS/H 401)	Florida Building Code; Prohibiting the Department of Health from requiring that pools serving assisted living facilities be compliant with rules relating to swimming pool lifeguards; authorizing a substantially affected person to file a petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; prohibiting a local government from requiring certain contracts for the application for or issuance of a building permit, etc. CA 03/30/2021 Fav/CS AP RC	Fav/CS Yeas 9 Nays 0
9	SB 1274 Perry (Compare H 487)	Growth Management; Authorizing landowners with development orders existing before the incorporation of a municipality to elect to abandon such orders and develop the vested density and intensity contained therein under specified conditions; revising the required acreage thresholds under which a small scale development amendment may be adopted, etc. CA 03/30/2021 Fav/CS CM RC	Fav/CS Yeas 7 Nays 2
10	SB 1330 Rodriguez (Compare CS/H 571)	Ad Valorem Tax Exemption for Nonprofit Homes for the Aged; Exempting from ad valorem taxation certain entities wholly owned by a nonprofit corporation; revising the criteria that must be met by certain units or apartments in homes for the aged to be exempt from ad valorem taxation, etc. CA 03/30/2021 Fav/CS FT AP	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 30, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 1520 Judiciary / Boyd (Identical CS/H 1139)	Ancillary Property Rights; Providing that a utility easement is an interest in real property and subject to certain actions unless otherwise provided in the instrument creating the easement; revising rights that are not affected or extinguished by marketable record titles; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests, etc. JU 03/09/2021 Fav/CS CA 03/30/2021 Favorable RC	Favorable Yeas 9 Nays 0
12	SB 1584 Gruters (Similar H 623)	Taxation of Real Property Platform Transactions; Defining the term "real property platform"; providing a methodology to be used in determining documentary stamp taxes due if a real property platform purchases and sells residential property within a specified timeframe, etc. CA 03/30/2021 Fav/CS FT AP	Fav/CS Yeas 9 Nays 0
13	CS/SB 1876 Judiciary / Albritton (Compare H 421, H 1101, S 1380)	Relief from Burdens on Real Property Rights; Revising the definitions of the terms "action of a governmental entity" and "real property"; revising notice of claim requirements for property owners; authorizing property owners to bring actions to declare prohibited exactions invalid; revising the definition of the terms "land" or "real property", etc. JU 03/22/2021 Fav/CS CA 03/30/2021 Favorable RC	Favorable Yeas 6 Nays 3
14	SB 1944 Albritton (Similar CS/H 1567)	Utility and Communications Poles; Requiring the Public Service Commission to regulate and enforce rates, charges, terms, and conditions for pole attachments under certain circumstances; providing situations under which a pole owner may deny access to the owner's pole on a nondiscriminatory basis; authorizing the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments; requiring attaching entities to remove pole attachments from redundant poles within a specified timeframe after receipt of a written notice from the pole owner, etc. RI 03/16/2021 Favorable CA 03/30/2021 Favorable AP	Favorable Yeas 8 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 30, 2021, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	CS/SB 1946 Environment and Natural Resources / Polsky (Identical CS/H 1515, Compare CS/CS/H 639, CS/S 1086)	Anchoring Limitation Areas; Authorizing counties to establish anchoring limitation areas that meet certain requirements; providing that specified established anchoring limitation areas are exempt from specified provisions; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; requiring the Fish and Wildlife Conservation Commission to initiate rulemaking by a certain date, etc. EN 03/22/2021 Fav/CS CA 03/30/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0
16	SB 2008 Diaz (Similar CS/CS/H 1429)	Tourist and Convention Development Taxes; Deleting a provision requiring an extraordinary vote of a governing board for a county or subcounty special taxing district to increase its tourist development taxes; authorizing a county to impose a tourist development tax to finance flood mitigation projects or improvements; specifying that certain taxing authority expires 5 years after the date the authority was approved in an election; authorizing convention development taxes to finance flood mitigation projects or improvements, etc. CA 03/30/2021 Temporarily Postponed FT AP	Temporarily Postponed

Other Related Meeting Documents

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

102

Bill Number (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director of Government Relations

Address 400 S Monroe St

Phone

Street

Tallahassee

FL

32399

Email

City

State

Zip

Speaking: For Against Information

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

Representing Office of the Attorney General

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

03/30/2021

Meeting Date

102

Bill Number (if applicable)

Topic Attorney General Designation...Matters of Gov't Concern

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-222-9684

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3-30-21

Meeting Date

102

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: For Against Information

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

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

102

Bill Number (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name Bob McKee

Job Title Deputy Director of Public Policy

Address 100 S Monroe

Phone (850) 922-4300

Street

Tallahassee

FL

32308

Email bmckee@fl-counties.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

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

102

Bill Number (if applicable)

Topic Attorney general Designation

Amendment Barcode (if applicable)

Name Ida V. Eskamoni

Job Title

Address

Street

Phone 407 376 4801

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

03.30.21

Meeting Date

102

Bill Number (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

Meeting Date

SB 102

Bill Number (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name James Young

Job Title Attorney

Address 76 S. Laura Street, Suite 1100

Phone 904-398-2722

Street

Jacksonville

FL

32202

Email jyoung@forthepeople.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

102

Bill Number (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name John Guard

Job Title Chief Deputy Attorney General

Address 400 S Monroe St

Phone _____

Street

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Office of the Attorney General

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)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

102

Bill Number (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Amendment Barcode (if applicable)

Name Former Attorney General Bill McCollum

Job Title Partner, Dentons US, LLP

Address 1900 K Street

Phone 407-353-4640

Street

Washington

DC

20006

Email bill.mccollum@dentons.com

City

State

Zip

Speaking: For Against Information

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

Representing US Chamber

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

03/30/2021

Meeting Date

102

Bill Number (if applicable)

260332

Topic Atty General Matters of Great Gov't Concern

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-222-9684

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

Meeting Date

SB 102

Bill Number (if applicable)

260332

Amendment Barcode (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Name James Young

Job Title Attorney

Address 76 S. Laura Street, Suite 1100

Phone 904-398-2722

Street

Jacksonville

FL

32202

Email jyoung@forthepeople.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

102

Bill Number (if applicable)

260332

Amendment Barcode (if applicable)

Topic Attorney General Designation of Matters of Great Governmental Concern

Name John Guard

Job Title Chief Deputy Attorney General

Address 400 S Monroe St

Street

Tallahassee

City

FL

State

32399

Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing Office of the Attorney General

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
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 Community Affairs

BILL: CS/SB 102

INTRODUCER: Community Affairs Committee and Senator Burgess

SUBJECT: Attorney General Designation of Matters of Great Governmental Concern

DATE: April 1, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Fav/CS
2.	_____	_____	AP	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 102 creates s. 16.65, F.S., which establishes a system wherein the Attorney General, as the state’s chief legal officer, is responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern. The bill defines a “matter of great governmental concern” as any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in fifteen or more counties in this state.

The bill endows the Legislature with authority to declare a matter to be a matter of great governmental concern by concurrent resolution. The Legislature also has the authority to amend or rescind such resolution. A declaration of a matter of great governmental concern provides the Attorney General with the sole authority to file a civil proceeding on behalf of the affected governmental entities in the state unless and until that declaration is rescinded by the Legislature.

Under the bill, the Attorney General may take any legal action he or she determines is in the public interest as long as such action is not inconsistent with the terms or provisions of the Legislature’s resolution declaring the matter to be a matter of great governmental concern. When a matter is declared a matter of great governmental concern, the Attorney General is expressly provided the following procedural rights in state or federal court civil litigation:

- May institute or intervene in any legal proceeding, including any pending appeal;
- May consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest;

- A declaration operates to abate or stay any relevant civil proceeding filed by a governmental entity unless and until the Attorney General takes action in such proceeding; and
- Any statute of limitations under Florida law affecting a claim by a governmental entity is tolled for the declaration's pendency or 1 year, whichever is shorter.

The bill provides that public officials and employees involved in a matter of great governmental concern have to furnish relevant assistance and information to the Attorney General, including notice of any pending civil proceeding related to a matter of great governmental concern.

The bill requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms of a settlement agreement. Also, any settlement or resolution of a civil proceeding by a governmental entity taken after a declaration without the Attorney General's consent is void.

The bill states that the Department of Legal Affairs is exempt from s. 120.57(3), F.S., for purposes relevant to a matter of great governmental concern.

The bill also provides a procedure for an attorney to receive from any recovery reasonable attorney fees and costs incurred in connection with representing a governmental entity before the Attorney General issues a declaration. The bill describes the various criteria a court must consider when calculating the amount of any reasonable attorney fees.

The bill takes effect upon becoming law.

II. Present Situation:

The Florida Executive Branch and Cabinet

Like the federal system, Florida's state government is divided into three branches: the executive branch, the legislative branch, and the judicial branch. The governor of Florida is the chief executive of Florida and the State's chief administrative officer responsible for the planning and budgeting for the State and serves as chair when the governor and the Florida Cabinet sit as a decision-making body in various constitutional roles. The governor has the power to execute Florida's laws and to call out the state militia to preserve the public peace, being commander-in-chief of the State's military forces that are not in active service of the United States.¹

Florida is unique among U.S. states in its cabinet-style government. Members of the Florida Cabinet are independently elected and have equal footing with the governor on issues under the Cabinet's jurisdiction. The Cabinet consists of the attorney general, the commissioner of agriculture, and the chief financial officer. Along with the governor, each member carries one vote in the cabinet decision-making process. In the event of a tie, the side of the governor is the

¹ Article IV, Sections 1 and 4, of the Florida Constitution.

prevailing side. Cabinet elections are held every four years, on even-numbered years not divisible by four (such as 2018, 2022, etc.).²

The State Attorney General

The Florida attorney general is the State's chief legal officer. The attorney general is responsible for and the head of the Department of Legal Affairs.³ As with other elected statewide offices in Florida, the attorney general is limited to serving two consecutive four-year terms. The attorney general is second (behind the lieutenant governor) in the line of succession to the Governor of Florida's office.⁴

Roles and Functions of the Attorney General

The Attorney General has various roles and functions within Florida's government and legal system. These responsibilities are outlined in the Florida Constitution and state statute. The Attorney General performs the following responsibilities:⁵

- Defends the constitutionality of statutes duly enacted by the Legislature;
- Issues formal legal opinions at the request of various public officials on questions relating to the application of state law;
- Is responsible for protecting Florida consumers from various types of fraud and enforcing the state's antitrust laws;
- Protects Floridians in Medicaid fraud cases;
- Defends the state in civil litigation cases;
- Represents the people of Florida when criminals appeal their convictions in state and federal courts; and
- Administers programs to assist victims of crime.

The Office of the Attorney General also houses and oversees other officials and departments. The Solicitor General is a position within the Office of the Attorney General. The Solicitor General is appointed by and serves at the pleasure of the Attorney General. The Solicitor General oversees civil and criminal appeals involving the State and has the authority to decide whether the State should appeal a case to the Florida Supreme Court, United States Supreme Court, or the Eleventh Circuit Court of Appeal, as well as the authority to decide whether the State should file or join an amicus brief in state or federal court.⁶

Furthermore, the Attorney General appoints the Statewide Prosecution from a list of nominees selected by the Florida Supreme Court Judicial Nominating Commission. The Statewide Prosecutor serves four years terms and acts as the agency head for eight offices throughout the

² Article IV, Sections 1 and 4, of the Florida Constitution.

³ Article IV, Sections 10, of the Florida Constitution.

⁴ Article IV, Sections 4, of the Florida Constitution.

⁵ See generally Office of Attorney General Ashley Moody Website, available at: <http://www.myfloridalegal.com/> (last visited Mar. 27, 2021).

⁶ Office of Attorney General, Role of Solicitor General, available at: <http://myfloridalegal.com/pages.nsf/main/a0cb91c5c403a0f385256cc6007a3808!OpenDocument> (last visited Mar. 27, 2021).

state that targets widespread criminal activities throughout Florida, including identity theft, drug trafficking, and gang activity.⁷

The Office of the Attorney General also houses the Florida Commission on the Status of Women, the Council on the Social Status of Black Men and Boys, and the Office of Civil Rights, which investigates and takes legal action against civil rights violations.⁸

Attorney General Common Law Powers

In addition to the Attorney General's variety of constitutional and statutory powers, courts have ruled that state attorney generals have broad legal powers under common law. The common law provides the Attorney General with authority to intervene in matters of compelling public interest. Under common law, the Attorney General has the power and duty to prosecute all actions necessary to protect and defend the state's property and revenue.⁹ Moreover, in Florida, the attorney general is in many respects judicial in character and is clothed with considerable discretion. This considerable discretion includes the Attorney General's power to institute litigation on his or her own initiative.¹⁰

In the case of *State of Fla. ex rel. Shevin v. Exxon Corp.*, the U.S. Court of Appeals for the Fifth Circuit ruled that the Attorney General of Florida retains common-law powers, and in the absence of an express legislative provision to the contrary, the Attorney General's common law powers prevail.¹¹

The Doctrine of Parens Patriae¹²

The sovereign role of states and the exercise of police power is to promote the people's health, safety, and welfare. In service of this sovereign responsibility, states may vindicate their interest in the citizenships' welfare through a legal action referred to as *parens patriae*. The Latin phrase *Parens patriae* means "parent of the country." Under this legal action, states may recover costs or damages incurred because of behavior that threatens the state's citizenry's health, safety, and welfare.¹³

American courts have uniformly recognized a state's authority to sue as *parens patriae*. In this legal action, the state alleges that a defendant's misbehavior harmed the state's interest in protecting its citizens and its interest in enforcing civil and criminal law. More specifically, *parens patriae* actions have been ruled appropriate for suits seeking to abate public nuisances, maintain access to energy sources, halt price-fixing, and enforce state anti-trust laws. In the United States, *parens patriae* actions were greatly expanded over the 1900s and have been

⁷ Office of Attorney General, Office of Statewide Prosecution, *available at*: <http://www.myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited Mar. 27, 2021).

⁸ Office of Attorney General Ashley Moody Website, *available at*: <http://www.myfloridalegal.com/> (last visited Mar. 27, 2021).

⁹ *See Thompson v. Wainwright*, 714 F.2d 1495, 1500–1501 (11th Cir.1983)

¹⁰ *See State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir. 1976).

¹¹ *See id.*

¹² *See generally* Richard P. Ieyoub & Theodore Eisenberg, *State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae*, 74 Tul. L.Rev. 1859 (2000).

¹³ *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758 (S.D.Miss. 2014).

described as an increasingly popular vehicle for state attorneys general to vindicate their constituents' rights.¹⁴

A *parens patriae* action by a state is typically reserved for breaches of duty or inflictions of damages on a statewide scale, warranting civil state involvement in litigation. A state is not permitted to enter a controversy as a nominal party to forward individual citizens' claims. But it may act as the representative of its citizens in original actions where the injury alleged affects the general population of a state in a substantial way.¹⁵ *Parens patriae* actions are disfavored where the injury falls “on a small group of citizens who are likely to challenge” the harm directly. But where “a great many citizens ... are faced with increased costs aggregating millions of dollars per year” and “cannot be expected to litigate [the issue] given that the amounts paid by each consumer are likely to be relatively small, *parens patriae* suits are appropriate. *Parens patriae* statutes are most common in the antitrust and consumer protection contexts.¹⁶

Procedural Limits to Attorney General Common Law Powers in Litigation

Although the Attorney General has broad authority to litigate matters in the public interest, courts have ruled that the Attorney General must still abide by relevant judicial procedures and rules. In the case of *Bondi v. Tucker*, Florida’s First District Court of Appeal ruled that when the Attorney General does appear in court as a party litigant, he or she is subject to the same rules of judicial procedure which other litigants must observe. In this case, Attorney General Bondi failed to participate as a party in the lower tribunal proceedings and was denied the ability to invoke appellate proceedings individually. In its decision, the court expressly recognizes that courts maintain discretion to enforce judicial procedure even when the Attorney General is involved.¹⁷

Instances of State Involvement in Civil Litigation

Petroleum Products Overcharges

In *Hawaii v. Standard Oil*, the state of Hawaii brought a complaint against companies involved in the petroleum industry, alleging defendants violated the Sherman Act, 26 Stat. 209, 15 U.S.C. s 1, by entering into unlawful contracts; by conspiring and combining to restrain trade and commerce in the sale, marketing, and distribution of refined petroleum products; and by attempting to monopolize and actually monopolizing trade and commerce in the petroleum industry.¹⁸

The State sought to recover damages in three distinct capacities. First, the state claimed it suffered damages in its proprietary capacity for overcharges for petroleum products sold to the State itself. Second, as *parens patriae*, Hawaii sought similar damages for overcharges paid by the State's citizens. Third, the state looked to recover damages as the representative of all purchasers in Hawaii for the overcharges.¹⁹

¹⁴ See *Mississippi ex rel. Hood*, 876 F.Supp.2d 758 (S.D.Miss. 2014).

¹⁵ *Maryland v. Louisiana*, 451 U.S. 725, 737, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981)

¹⁶ See *id.*

¹⁷ *Bondi v. Tucker*, 93 So.3d 1106 (Fla. 1st DCA 2012).

¹⁸ *Hawaii v. Standard Oil Co. of Cal.*, 405 U.S. 251 (1972).

¹⁹ *Id.*

In this case, the Supreme Court held that the State of Hawaii could seek damages for its citizens via a *parens patriae* suit alleging antitrust violations.²⁰

Liquid Crystal Display Price-fixing

In the case of *Mississippi ex rel. Hood v. AU Optronics Corp.*, the Attorney General of Mississippi filed a state court *parens patriae* suit on behalf of the State of Mississippi against manufacturers, marketers, sellers, and distributors of liquid crystal display (LCD) panels, alleging that defendants engaged in a price-fixing scheme in violation of Mississippi Consumer Protection Act (MCPA) and Mississippi Antitrust Act (MAA).²¹

The State sought the following relief: (1) a permanent injunction prohibiting the defendants from continuing to engage in anti-competitive behavior; (2) civil penalties of \$10,000 per LCD panel product sold in Mississippi during the relevant time period, pursuant to the MCPA; (3) civil penalties of up to \$2,000 per month, per defendant for violations of the MAA during the relevant time period; (4) restitution to the State for its own losses caused by purchasing LCD panel products during the relevant time period; (5) restitution to the State on behalf of its citizens and local governments who suffered losses by purchasing LCD panel products during the relevant time period; (6) punitive damages; and (7) other relief including costs of court, pre- and post-judgment interest, and attorney's fees.²²

The ruling in this case mainly involved whether Mississippi's claims were subject to the Class Action Fairness Act provisions and must be brought in federal court or could be brought in state court. The court in this case ultimately ruled that Mississippi's Attorney General may maintain a *parens patriae* suit in state court, to enforce Mississippi's consumer protection and antitrust laws, for the economic well-being of Mississippi's consumers and governmental entities, and that the general public exception to Class Action Fairness Act applied to prevent removal to federal court.²³

2010 Deepwater Horizon Oil Spill

On April 20, 2010, the Transocean offshore oil rig, Deepwater Horizon, under the operation of BP, exploded in the Gulf of Mexico, causing an estimated 4.9 million barrels of crude oil to spill into the ocean approximately 45 miles south of the Louisiana coast. Florida Governor Charlie Crist issued a state of emergency as a result of the spreading oil spill.²⁴

On April 4, 2016, Florida, the four other affected Gulf States, the federal government, and BP entered into a Consent Decree, "In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010" (no. 2179, M.D.L, document no. 15), that awarded civil and criminal penalties in the amount of \$20.8 billion to the United States and the five Gulf States to be paid by parties responsible for the oil spill. In a separate agreement, BP agreed to pay a total of \$4.9 billion to the five Gulf States and up to \$1 billion to local government entities for

²⁰ *Hawaii*, 405 U.S. 251 (1972).

²¹ *Mississippi ex rel. Hood v. AU Optronics Corp.*, 876 F.Supp.2d 758 (S.D.Miss. 2012).

²² *Id.*

²³ *Id.*

²⁴ Triumph Gulf Coast, Inc. Website, *Triumph Timeline*, available at: <https://www.myfloridatriumph.com/about/triumph-timeline/> (last visited Mar. 29, 2021).

economic damage claims related to the Deepwater Horizon incident.²⁵ In July of 2016, Attorney General Pam Bondi received the first settlement payment from BP for \$400 million.²⁶

To administer the settlement funds paid by BP, the Florida Legislature established the Triumph Gulf Coast, Inc., a nonprofit corporation created pursuant to s. 288.8013, F.S. Under s. 288.8013(2), F.S., seventy-five percent of all payments to the state pursuant to the settlement agreement with BP are transferred immediately by the Chief Financial Officer from the General Revenue Fund to the Triumph Gulf Coast Trust Fund. Triumph Gulf Coast, Inc. is responsible for allocating settlement funds by providing awards for public and private projects within each disproportionately affected county's geographic boundaries.²⁷

Opioid Epidemic

From 1999 to 2016, it is estimated 453,300 Americans have died from opioids.²⁸ The opioid epidemic was initially caused by the over-prescription of opioids in the 1990s, which led to them becoming the most prescribed class of medications in the United States. The U.S. Department of Justice has found that civil and criminal violations by opioid manufacturers substantially contributed to the opioid epidemic.²⁹

In the aftermath of this epidemic, numerous state, county, and city governments have brought civil claims against opioid manufacturers to recoup damages related to the opioid epidemic. In 2019, opioid distributors McKesson Corp., AmerisourceBergen, Cardinal Health, and drug manufacturer Teva Pharmaceuticals agreed to a \$260 million settlement with Cuyahoga and Summit counties in Ohio.³⁰ Also in 2019, an Oklahoma judge ruled that Johnson and Johnson must pay the state of Oklahoma \$572 million as damages for actions that contributed to the opioid epidemic.³¹

In Florida, Broward County, Broward Health Hospital District, and 26 other governmental entities and institutions across the state have also joined civil litigation against Purdue Pharma, Johnson & Johnson, Abbott Laboratories, and others in the prescription opioid industry. The

²⁵ Triumph Gulf Coast, Inc. Website, *Triumph Timeline*, available at: <https://www.myfloridatriumph.com/about/triumph-timeline/> (last visited Mar. 29, 2021).

²⁶ *Id.*

²⁷ Section 288.8013, F.S.

²⁸ "The Opioid Epidemic Might Be Much Worse Than We Thought". The Atlantic, February 27, 2020, available at: <https://www.theatlantic.com/health/archive/2020/02/more-people-have-died-opioids-us-thought/607165/> (last visited Mar. 29, 2021); Mohamadi A, Chan JJ, Lian J, Wright CL, Marin AM, Rodriguez EK, von Keudell A, Nazarian A (August 2018), "Risk Factors and Pooled Rate of Prolonged Opioid Use Following Trauma or Surgery: A Systematic Review and Meta-Regression) Analysis". The Journal of Bone and Joint Surgery. American Volume. 100 (15): 1332–1340.

²⁹ Justice Department Announces Global Resolution of Criminal and Civil Investigations with Opioid Manufacturer Purdue Pharma and Civil Settlement with Members of the Sackler Family, Oct. 21, 2020, available at: <https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-opioid> (last visited Mar. 29, 2021).

³⁰ Government Lawsuits Against Opioid Distributors & Manufacturers, available at: <https://www.levinlaw.com/government-opioid-lawsuit> (last visited Mar. 29, 2021).

³¹ "Oklahoma wins case against drugmaker in historic opioid trial," CNN, Aug. 27, 2019, available at: <https://www.cnn.com/2019/08/26/health/oklahoma-opioid-trial-verdict-bn/index.html> (last visited Mar. 29, 2021).

suits allege negligence, fraud, and civil conspiracy, seek millions of dollars in damages, and demanding a jury trial.³²

On February 4, 2021, Attorney General Ashley Moody announced that her office secured millions of dollars for Florida through efforts to hold accountable corporations responsible for helping fuel the deadly opioid epidemic. Florida joined a coalition of 47 states, the District of Columbia, and five U.S. territories in the \$573 million action with one of the world's largest consulting firms, McKinsey & Company. The multistate action resolved investigations into the company's role in working for opioid companies to promote products that fueled the opioid epidemic. As a result, Florida will receive more than \$40 million—a majority of which will be made available for allocation by Florida lawmakers.³³

Similarly, on March 16, 2021, Attorney General Moody announced that her office secured additional funding for Florida communities from Purdue Pharma's bankruptcy plan, which is worth approximately \$7 billion in total. .³⁴

III. Effect of Proposed Changes:

The bill creates s. 16.65, F.S., which establishes a system wherein the Attorney General, as the state's chief legal officer, is responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern.

The bill includes legislative findings that a single official representing governmental entities in civil proceedings in matters of great governmental concern will maximize recoveries and minimize costs. The bill states it is the intent of the Legislature to establish a procedure for use by the Attorney General in addressing matters of great governmental concern, and that the act is not intended to expand or change existing law with respect to the power and authority of the Attorney General.

The bill defines "governmental entity" to mean the state and any department, agency, political subdivision, unit of government, or school district thereof. A "matter of great governmental concern" is defined as any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in fifteen or more counties in this state.

The bill endows the Legislature with authority to declare a matter to be a matter of great governmental concern by concurrent resolution. The Legislature also has the authority to amend or rescind such resolution. A declaration of a matter of great governmental concern provides the

³² "South Florida hospitals among 27 in state suing opioid makers and sellers, Broward lawsuit says," SunSentinel, Sep. 19, 2019, available at: <https://www.sun-sentinel.com/local/broward/fl-ne-hospitals-florida-suing-opioid-makers-sellers-20190920-z6eefkmghrdshctc34xb3yngyy-story.html> (last visited Mar. 29, 2021).

³³ Attorney General Moody Secures \$40 Million for Florida from Company Marketing Opioid Medications, available at: <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/BB37C4F6FABF771D85258672005079E1> (last visited Mar. 29, 2021).

³⁴ Attorney General Moody Secures Billions for Opioid Abatement Funds from Purdue Pharma Bankruptcy Plan, available at: <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/D6A7FC7B1D9774808525869A004BCDE5> (last visited Mar. 29, 2021).

Attorney General with the sole authority to file a civil proceeding on behalf of the affected governmental entities in the state unless and until that declaration is rescinded by the Legislature. Under the bill, when a matter is declared a matter of great governmental concern, the Attorney General may institute or intervene in any governmental entity legal proceeding, including any pending appeal, and may consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest, as long as such action is not inconsistent with the terms of the Legislature's resolution. The Legislature's declaration operates to abate or stay any relevant civil proceeding filed by a governmental entity unless and until the Attorney General takes action in such proceeding. A declaration by the Legislature also tolls any statute of limitations under Florida law affecting a claim by a governmental entity for the declaration's pendency or 1 year, whichever is shorter.

The bill provides that public officials and employees involved in a matter of great governmental concern have to furnish relevant assistance and information to the Attorney General, including notice of any pending civil proceeding related to a matter of great governmental concern.

The bill requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms of a settlement agreement. Also, any settlement or resolution of a civil proceeding by a governmental entity taken after a declaration without the Attorney General's consent is void.

The bill states that the Department of Legal Affairs is exempt from s. 120.57(3), F.S., for purposes relevant to a matter of great governmental concern.

The bill also provides a procedure for an attorney to receive from any recovery reasonable attorney fees and costs incurred in connection with representing a governmental entity before the Attorney General issues a declaration. The bill describes the various criteria a court must consider when calculating the amount of any reasonable attorney fees to include the following:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent, that the acceptance of the particular employment will preclude other employment by the attorney;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitation imposed by the governmental entity or the circumstances;
- The nature and length of the professional relationship with the governmental entity;
- The experience, reputation, and ability of the attorney performing the legal services; and
- Whether the fee is fixed or contingent.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article V, section 2(a) of the Florida Constitution, grants the Florida Supreme Court the exclusive authority to adopt rules of judicial practice and procedure for actions filed in Florida.³⁵ Generally, the Legislature is empowered to enact substantive law while the Florida Supreme Court has the authority to enact procedural law.³⁶ Accordingly, a statute that creates or modifies a procedural rule of the Florida Supreme Court violates Article II, section 3 of the Florida Constitution, which prohibits one branch of government from exercising any powers appertaining to either of the other branches unless expressly permitted by the constitution.³⁷

The bill may implicate these constitutional provisions by containing procedural dictates that fall exclusively within the Florida Supreme Court's constitutional powers and, thus, violate the constitutional separation of powers. The bill's constitutionality likely depends on whether a court considers the bill's provisions "clearly substantive" with "incidental" procedural aspects. If so, the bill may be constitutional.³⁸

The bill also may implicate Article I, section 10, of the United States Constitution and Article I, section 10, of the Florida Constitution. Both of these constitutional provisions prohibit any law that impairs the obligation of contracts. The bill may violate these constitutional restrictions by impairing existing contractual relationships between governmental entities and private attorneys that may be affected if the Attorney General declares that a matter is a great governmental concern.³⁹

³⁵ See *Se. Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So.3d 73, 78 (Fla.2012).

³⁶ *Massey v. David*, 979 So.2d 931, 936 (Fla.2008)

³⁷ See *State v. Raymond*, 906 So.2d 1045, 1048 (Fla.2005)

³⁸ "If a statute is clearly substantive and operates in an area of legitimate legislative concern, this Court will not hold that it constitutes an unconstitutional encroachment on the judicial branch. However, where a statute does not basically convey substantive rights, the procedural aspects of the statute cannot be deemed incidental, and that statute is unconstitutional. Moreover, where this Court has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict. Finally, where a statute has some substantive aspects, but the procedural requirements of the statute conflict with or interfere with the procedural mechanisms of the court system, those requirements are unconstitutional." *Massey v. David*, 979 So.2d 931, 937 (Fla.2008)(citation and quotations omitted).

³⁹ See *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So.3d 118 (Fla.2017)(claims bill's limitation on payment of attorney fees impermissibly impaired family's preexisting contingency fee contract with law firm).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill's current definition of a "matter of great governmental concern" appears to only apply to situations where a governmental entity suffers substantial economic loss or harm. This definition may exclude certain *parens patriae* legal actions related to the economic loss or harm suffered by the citizenry of a governmental entity and not the governmental entity itself.

VIII. Statutes Affected:

This bill creates section 16.65 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs on March 30, 2021:

The committee substitute makes the following revisions:

- Redefines "matter of great governmental concern" to mean situations where 15 or more counties suffer economic loss or other harm, as opposed to 5 or more counties;
- Provides that the Legislature has the authority to declare, amend, or rescind a declaration for a matter of great governmental concern by concurrent resolution, as opposed to the Attorney General;
- Provides that the Attorney General may take legal action in the public interest as long as such action is not inconsistent with the terms or provisions of the Legislature's resolution declaring the matter to be a matter of great governmental concern;
- Requires that any award for damages or monetary payment from a settlement arising from a matter of great governmental concern be subject to full appropriation by the Legislature; and

- Removes the statement that a declaration of a matter is a matter of great governmental concern does not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57, F.S.

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	.	
04/01/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 16.65, Florida Statutes, is created to
read:

16.65 Matters of great governmental concern.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Several events have led to extensive litigation by
multiple governmental entities in this state arising from the



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11 same facts, circumstances, or conduct or similar causes of
12 action. This litigation has been difficult to resolve in a
13 timely and expeditious manner because of the number and
14 different types of governmental entities involved.

15 (b) It is in the interest of this state that a single
16 official represent governmental entities in civil proceedings in
17 matters of great governmental concern to maximize recoveries and
18 minimize costs.

19 (c) The Attorney General is the state's chief legal officer
20 and is the official who should be responsible for the
21 prosecution, management, and coordination of any civil
22 proceedings brought by governmental entities in matters of great
23 governmental concern.

24 (d) The failure to have a single official responsible in
25 matters of great governmental concern undermines fairness and
26 efficiency and risks inconsistent or incongruent results, which
27 will delay recovery and undermine governmental entities' ability
28 to respond to such matters of great governmental concern.

29 (2) DEFINITIONS.—As used in this section, unless the
30 context otherwise requires, the term:

31 (a) "Governmental entity" means the state and any
32 department, agency, political subdivision, unit of government,
33 or school district thereof.

34 (b) "Matter of great governmental concern" means any fact,
35 circumstance, or conduct that has caused substantial economic
36 loss or other harm of a similar nature to governmental entities
37 in 15 or more counties in this state.

38 (3) AUTHORITY.—

39 (a) The Legislature by concurrent resolution may declare a



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40 matter to be a matter of great governmental concern. Upon such
41 declaration, the Attorney General has the sole authority to file
42 a civil proceeding on behalf of the affected governmental
43 entities in this state until the Legislature by concurrent
44 resolution invalidates, rescinds, or amends that declaration.

45 (b) The Attorney General may investigate a matter before
46 and after the Legislature declares that the matter is a matter
47 of great governmental concern. In any investigation and civil
48 proceeding commenced pursuant to this section, it is the duty of
49 all public officers and their deputies, assistants, clerks,
50 subordinates, and employees to render and furnish to the
51 Attorney General, when so requested, assistance and all
52 information available in their official capacity.

53 (c) The Attorney General may institute or intervene in any
54 civil proceeding in state or federal court, including any
55 pending appeal, on behalf of a governmental entity to seek any
56 relief afforded at law or in equity, under state or federal law,
57 pertaining to a matter of great governmental concern.

58 (d) The Attorney General may consolidate, dismiss, release,
59 settle, or take action that he or she believes to be in the
60 public interest in any civil proceeding in state or federal
61 court pertaining to a matter of great governmental concern,
62 provided that such action is not inconsistent with the terms or
63 provisions of the Legislature's resolution declaring the matter
64 to be a matter of great governmental concern.

65 (e) Any award for damages or monetary payment arising from
66 a civil proceeding, compromise, or settlement of any claim or
67 litigation pertaining to a matter of great governmental concern,
68 excluding attorney fees described in subsection (4), is subject



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69 to full appropriation by the Legislature and may not be
70 appropriated, expended, or encumbered by the Attorney General or
71 the terms or provisions of any settlement agreement.

72 (f) A declaration by the Legislature that a matter is a
73 matter of great governmental concern operates to abate or stay
74 any civil proceeding in state or federal court pertaining to the
75 matter of great governmental concern filed by a governmental
76 entity until the Attorney General takes an action in such
77 proceeding.

78 (g) Any statute of limitations under the laws of this state
79 affecting a claim by a governmental entity is tolled for the
80 pendency of a declaration that a matter is a matter of great
81 governmental concern or for 1 year, whichever is earlier.

82 (h) Upon learning of a declaration that a matter is a
83 matter of great governmental concern, all governmental entities
84 then a party to any affected civil proceeding shall provide
85 notice to the Attorney General of the existence of any such
86 civil proceeding, including the style of the action, the case
87 number, and the court where such proceeding is pending. Any
88 settlement or resolution of the civil proceeding by a
89 governmental entity taken after a declaration without the
90 consent of the Attorney General is void.

91 (i) For purposes of this subsection, the Department of
92 Legal Affairs is exempt from s. 120.57(3).

93 (4) ATTORNEY FEES.—

94 (a) If a governmental entity retains attorneys to represent
95 it before a matter is declared to be a matter of great
96 governmental concern, the governmental entity or its attorneys
97 may apply to the court where the civil proceeding is being



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98 prosecuted by the Attorney General or, if no such proceeding
99 exists, in the circuit court in and for Leon County to receive
100 from any recovery its reasonable attorney fees and costs
101 incurred in connection with such representation.

102 (b) In calculating the amount of any reasonable attorney
103 fees, the court shall consider all of the following factors:

104 1. The time and labor required, the novelty and difficulty
105 of the question involved, and the skill requisite to perform the
106 legal service properly.

107 2. The likelihood, if apparent, that the acceptance of the
108 particular employment will preclude other employment by the
109 attorney.

110 3. The fee customarily charged in the locality for similar
111 legal services.

112 4. The amount involved and the results obtained.

113 5. The time limitation imposed by the governmental entity
114 or the circumstances.

115 6. The nature and length of the professional relationship
116 with the governmental entity.

117 7. The experience, reputation, and ability of the attorney
118 performing the legal services.

119 8. Whether the fee is fixed or contingent.

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

121
122 ===== T I T L E A M E N D M E N T =====

123 And the title is amended as follows:

124 Delete everything before the enacting clause
125 and insert:

126 A bill to be entitled



127 An act relating to matters of great governmental
128 concern; creating s. 16.65, F.S.; providing
129 legislative findings; defining terms; authorizing the
130 Legislature to declare, by concurrent resolution, that
131 a circumstance or conduct that has caused substantial
132 economic loss or other similar harm to governmental
133 entities in at least a specified number of counties is
134 a matter of great governmental concern; providing that
135 the Attorney General has the sole authority to file
136 certain civil proceedings; authorizing the Attorney
137 General to investigate certain matters; authorizing
138 the Attorney General to institute or intervene in
139 certain civil proceedings; authorizing the Attorney
140 General to take certain actions in certain civil
141 proceedings; providing that any award, excluding
142 attorney fees, are subject to full appropriation by
143 the Legislature; prohibiting such award to be
144 appropriated, expended, or encumbered by the Attorney
145 General or any settlement agreement; providing that a
146 declaration by the Legislature that a matter is a
147 matter of great governmental concern abates or stays
148 certain civil proceedings; providing for the tolling
149 of certain statutes of limitations; requiring certain
150 entities to provide notice to the Attorney General;
151 providing that certain settlements and resolutions are
152 void; providing that the Department of Legal Affairs
153 is exempt from certain requirements related to
154 protests to contract solicitation or award;
155 authorizing a governmental entity or its attorneys to



260332

156 apply to a court for recovery of attorney fees and
157 costs; requiring a court to consider certain factors
158 in calculating the amount of attorney fees; providing
159 an effective date.

By Senator Burgess

20-02270-21

2021102__

1 A bill to be entitled
 2 An act relating to Attorney General designation of
 3 matters of great governmental concern; creating s.
 4 16.65, F.S.; providing legislative findings and
 5 intent; providing definitions; authorizing the
 6 Attorney General to declare that a matter is a matter
 7 of great governmental concern; providing that the
 8 Attorney General has the sole authority to file
 9 certain civil proceedings; authorizing the Attorney
 10 General to investigate certain matters; authorizing
 11 the Attorney General to institute or intervene in
 12 certain civil proceedings; authorizing the Attorney
 13 General to take certain actions in certain civil
 14 proceedings; providing that a declaration by the
 15 Attorney General that a matter is a matter of great
 16 governmental concern abates or stays certain civil
 17 proceedings; providing for the tolling of certain
 18 statutes of limitations; requiring certain entities to
 19 provide notice to the Attorney General; providing
 20 certain settlements and resolutions are void;
 21 providing that certain declarations do not constitute
 22 final agency action subject to review; providing that
 23 the Department of Legal Affairs is exempt from certain
 24 provisions for certain purposes; authorizing a
 25 governmental entity or its attorneys to apply to a
 26 court for recovery of attorney fees and costs;
 27 requiring a court to consider certain factors in
 28 calculating the amount of attorney fees; providing an
 29 effective date.

Page 1 of 6

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

20-02270-21

2021102__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 16.65, Florida Statutes, is created to
 34 read:
 35 16.65 Matters of great governmental concern.—
 36 (1) LEGISLATIVE FINDINGS AND INTENT.—
 37 (a) The Legislature finds that:
 38 1. There have been several events that have led to
 39 extensive litigation by multiple governmental entities in the
 40 state arising from the same facts, circumstances, or conduct or
 41 similar causes of action. This litigation has been difficult to
 42 resolve in a timely and expeditious manner because of the number
 43 and different types of governmental entities involved.
 44 2. It is in the interest of the state that a single
 45 official represent governmental entities in civil proceedings in
 46 matters of great governmental concern to maximize recoveries and
 47 minimize costs.
 48 3. The Attorney General is the state's chief legal officer
 49 and is the official that should be responsible for the
 50 prosecution, management, and coordination of any civil
 51 proceedings brought by governmental entities in matters of great
 52 governmental concern.
 53 4. The failure to have a single official responsible in
 54 matters of great governmental concern undermines fairness and
 55 efficiency and risks inconsistent or incongruent results, which
 56 will delay recovery and will undermine governmental entities'
 57 ability to respond to matters of great governmental concern.
 58 (b) It is the intent of the Legislature to establish a

Page 2 of 6

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59 procedure for use by the Attorney General in addressing matters
60 of great governmental concern. This act is not intended to
61 expand or change existing law with respect to the power and
62 authority of the Attorney General.

63 (2) DEFINITIONS.—As used in this section, unless the
64 context otherwise requires, the term:

65 (a) "Governmental entity" means the state and any
66 department, agency, political subdivision, unit of government,
67 or school district thereof.

68 (b) "Matter of great governmental concern" means any fact,
69 circumstance, or conduct that has caused substantial economic
70 loss or other harm of a similar nature to governmental entities
71 in five or more counties in this state.

72 (3) AUTHORITY.—

73 (a) The Attorney General may declare a matter to be a
74 matter of great governmental concern. Upon such declaration, the
75 Attorney General has the sole authority to file a civil
76 proceeding on behalf of the affected governmental entities in
77 the state unless and until the Attorney General rescinds that
78 declaration.

79 (b) The Attorney General may investigate a matter before
80 and after declaring that the matter is a matter of great
81 governmental concern. In any investigation and civil proceeding
82 commenced pursuant to this section, it is the duty of all public
83 officers and their deputies, assistants, clerks, subordinates,
84 and employees to render and furnish to the Attorney General,
85 when so requested, assistance and all information available in
86 their official capacity.

87 (c) The Attorney General may institute or intervene in any

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88 civil proceeding in state or federal court, including any
89 pending appeal, on behalf of a governmental entity to seek any
90 relief afforded at law or in equity, under state or federal law,
91 pertaining to a matter of great governmental concern.

92 (d) The Attorney General may consolidate, dismiss, release,
93 settle, or take action that he or she believes to be in the
94 public interest in any civil proceeding in state or federal
95 court pertaining to a matter of great governmental concern.

96 (e) A declaration by the Attorney General that a matter is
97 a matter of great governmental concern shall operate to abate or
98 stay any civil proceeding in state or federal court pertaining
99 to the matter of great governmental concern filed by a
100 governmental entity unless and until the Attorney General takes
101 an action in such proceeding.

102 (f) Any statute of limitations under the laws of the state
103 affecting a claim by a governmental entity shall be tolled for
104 the pendency of a declaration that a matter is a matter of great
105 governmental concern or 1 year, whichever is shorter.

106 (g) Upon learning of a declaration that a matter is a
107 matter of great governmental concern, all governmental entities
108 then a party to any affected civil proceeding shall provide
109 notice to the Attorney General of the existence of any such
110 civil proceeding, including the style of the action, the case
111 number, and the court where such proceeding is pending. Any
112 settlement or resolution of the civil proceeding by a
113 governmental entity taken after a declaration without the
114 consent of the Attorney General is void.

115 (h) The declaration that a matter is a matter of great
116 governmental concern does not constitute a final agency action

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117 subject to review pursuant to ss. 120.569 and 120.57. For
 118 purposes of this subsection, the Department of Legal Affairs is
 119 exempt from s. 120.57(3).
 120 (4) ATTORNEY FEES.—
 121 (a) If, before a declaration that a matter is a matter of
 122 great governmental concern, a governmental entity retains
 123 attorneys to represent it, the governmental entity or its
 124 attorneys may apply to the court where the civil proceeding is
 125 being prosecuted by the Attorney General, or in the circuit
 126 court in and for Leon County, Florida, if no such proceeding
 127 exists, to receive from any recovery its reasonable attorney
 128 fees and costs incurred in connection with such representation
 129 before the declaration.
 130 (b) In calculating the amount of any reasonable attorney
 131 fees, a court shall consider the following factors:
 132 1. The time and labor required, the novelty and difficulty
 133 of the question involved, and the skill requisite to perform the
 134 legal service properly.
 135 2. The likelihood, if apparent, that the acceptance of the
 136 particular employment will preclude other employment by the
 137 attorney.
 138 3. The fee customarily charged in the locality for similar
 139 legal services.
 140 4. The amount involved and the results obtained.
 141 5. The time limitation imposed by the governmental entity
 142 or the circumstances.
 143 6. The nature and length of the professional relationship
 144 with the governmental entity.
 145 7. The experience, reputation, and ability of the attorney

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146 performing the legal services.
 147 8. Whether the fee is fixed or contingent.
 148 Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE
APPEARANCE RECORD

Received after mtg.

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

3/30/21

Meeting Date

SB-268

Bill Number (if applicable)

Topic LOCAL PREEMPTION

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone _____

TALLAHASSEE, FL 32303
City State Zip

Email _____

Speaking: For Against Information

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

SB 268

Bill Number (if applicable)

Topic Preemption of Local Occupational Licensing

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 S. Monroe St.

Phone 850-681-0024

Street

Tallahassee

FL

32301

Email jorge@flapartners.com

City

State

Zip

Speaking: For Against Information

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

Representing Opportunity Solutions Project

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/2021
Meeting Date

SB 268
Bill Number (if applicable)

Topic LOCAL LICENSING PREEMPTION

Amendment Barcode (if applicable)

Name CHRISTIAN CANARA

Job Title _____

Address PO Box 122

Phone 305 608 4300

Street TALLAHASSEE

City FL State 32302 Zip

Email _____

Speaking: For Against Information

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

Representing INSTITUTE FOR JUSTICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

30 Mar 2021

Meeting Date

268

Bill Number (if applicable)

Topic Local Licensing

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRY

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Americans For Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3-30-21

Meeting Date

268

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: For Against Information

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

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

268

Bill Number (if applicable)

Topic SB 268 - Preemption of Local Occupational Lic

Amendment Barcode (if applicable)

Name MATTHEW McDONALD

Job Title _____

Address 301 S. BRUNOUGH ST, STE 500

Street

Phone 850-528-3947

TALLAHASSEE

City

FL

State

32301

Zip

Email MATTE@PSMFL.NET

Speaking: For Against Information

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

Representing FLORIDA STORMWATER ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21 CA 3:30 A2

Meeting Date

268

Bill Number (if applicable)

Topic Preemption of Local Occupational Licensing

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

Street

Tallahassee

FL

32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

268

Bill Number (if applicable)

Topic Preemption of Local Occupational Licensing

Amendment Barcode (if applicable)

Name Bob McKee

Job Title Deputy Director of Public Policy

Address 100 S Monroe

Phone (850) 922-4300

Street

Tallahassee

FL

32308

Email bmckee@fl-counties.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

2128

Bill Number (if applicable)

Topic Preemption of Local Occupational Licensing

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address PO Box 10888
Street

Phone 850 228 8940

Tallahassee FL 32302
City State Zip

Email tking@fbetc.org

Speaking: For Against Information

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

Representing Florida Building Trades

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 268

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Preemption of Local Occupational Licensing

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 268 expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations, with the exception of local government licensing of occupations authorized by general law or occupational licenses imposed by a local government before January 1, 2021. However, the exception for local government licensing imposed by a local government expires July 1, 2023. Local government occupational licensing requirements in place by the deadline may not be increased or modified thereafter.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, within the Department of Business and Professional Regulation. It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

Finally, the bill authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical, and HVAC trades, as well as the electrical and alarm system trades, which is the current practice by counties and municipalities. Local journeyman licensing is excepted from the preemption of local licensing to the state since it would be authorized under general law.

The bill has no impact on state government.

The bill is effective July 1, 2021.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or general law.⁴ Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁵

Revenue Sources Authorized in the Florida Constitution⁶

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

No tax shall be levied except in pursuance of law. No state ad valorem taxes⁷ shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.⁸

Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ *See* s. 189.031(3)(b), F.S. *See also State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So.2d 1067, 1068 (Fla. 1st DCA 1982).

⁵ State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020*, available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Mar. 17, 2021).

⁶ *See* Office of Economic and Demographic Research, The Florida Legislature, *2020 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lghfih20.pdf> (last visited Mar. 17, 2021).

⁷ Pursuant to s. 192.001(1), F.S., "ad valorem tax" means a tax based upon the assessed value of property.

⁸ FLA. CONST. art. VII, s. 1(a).

to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.⁹

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Local Government Revenue Sources Based on Home Rule Authority¹⁰

Pursuant to home rule authority, counties and municipalities may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. Because special districts do not possess home rule powers, they may impose only those taxes, assessments, or fees authorized by special or general law.¹¹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment is inconsistent with state law when (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹²

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹³ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁴ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹⁵

⁹ FLA. CONST. art. VII, s. 9(a).

¹⁰ See also The Florida Legislature, *2020 Local Government Financial Handbook* *supra* note 6.

¹¹ See ch. 189, F.S. See also Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, *supra* note 5, at 70.

¹² See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 17, 2021).

¹³ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹⁴ *Mulligan*, 934 So.2d at 1243.

¹⁵ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁶ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁷ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.¹⁸ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁹

Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 26 professions and occupations.²⁰

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.²¹ If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.²² Florida law currently preempts local regulation with regard to the following:

- Assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of worker’s compensation insurance coverage by a contractor;²³
- Assessing local fees and rules regarding low-voltage alarm system projects;²⁴
- Smoking;²⁵
- Firearms and ammunition;²⁶
- Employment benefits;²⁷
- Polystyrene products;²⁸
- Public lodging establishments and public food service establishments;²⁹ and
- Disposable plastic bags.³⁰

¹⁶ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁷ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁸ *Id.*

¹⁹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

²⁰ See s. 20.165, F.S., and *Annual Report, Fiscal Year 2019-2020, for the Division of Professions, Certified Public Accounting, Real Estate, and Regulation*, and the list of professions and occupations at 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1920.pdf (last visited Mar. 17 2021).

²¹ See FLA. CONST art. VIII, s. 1(f), art. VIII, s. 2(b), and ss. 125.01(1) and 166.021(1), F.S.

²² See Wolf and Bolinder, *supra* note 12.

²³ Section 553.80(7)(a)5., F.S.

²⁴ Section 489.503(14), F.S.

²⁵ Section 386.209, F.S.

²⁶ Section 790.33(1), F.S.

²⁷ Section 218.077, F.S.

²⁸ Section 500.90, F.S.

²⁹ Section 509.032(7), F.S.

³⁰ Section 403.7033, F.S.

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations, and professions in certain circumstances.³¹ Florida law authorizes local regulations relating to:

- Zoning and land use;³²
- The levy of “reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter;”³³
- The levy of local business taxes;³⁴
- Building code inspection fees;³⁵
- Tattoo establishments;³⁶
- Massage practices;³⁷
- Child care facilities;³⁸
- Taxis and other vehicles for hire;³⁹
- Waste and sewage collection;⁴⁰ and
- Regulation of vaping.⁴¹

Construction Professional Licenses

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction Contracting

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR.⁴² The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.⁴³ The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.⁴⁴

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of

³¹ See Wolf and Bolinder, *supra* note 12.

³² See part II, ch. 163, F.S.

³³ Section 166.221, F.S.

³⁴ Chapter 205, F.S.

³⁵ Section 166.222, F.S.

³⁶ Section 381.00791, F.S.

³⁷ Section 480.052, F.S.

³⁸ Section 402.306, F.S.

³⁹ Section 125.01(1)(n), F.S.

⁴⁰ Section 125.01(1)(k), F.S.

⁴¹ Section 386.209, F.S.

⁴² See ss. 489.105, 489.107, and 489.113, F.S.

⁴³ Section 489.107(1), F.S.

⁴⁴ Section 489.107, F.S.

competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.⁴⁵

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.⁴⁶

“Registered contractors” are individuals who have taken and passed a local competency examination and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.⁴⁷

The following table provides examples of CILB licenses for types of contractors.⁴⁸

Statutory Licenses	Specialty Licenses
<ul style="list-style-type: none"> • Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation 	<ul style="list-style-type: none"> • Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.⁴⁹ Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for

⁴⁵ See ss. 489.105(6)-(8) and (11), F.S.

⁴⁶ See ss. 489.108, 489.113, 489.117, and 489.131, F.S.

⁴⁷ Section 489.117, F.S.

⁴⁸ See s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).

⁴⁹ Sections 489.117 and 489.131, F.S.

a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.⁵⁰ Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.⁵¹

Electrical and Alarm System Contracting

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the Electrical Contractors' Licensing Board (ECLB).⁵² Certified contractors may practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.⁵³

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.⁵⁴

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."⁵⁵

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking.⁵⁶ Certified electrical specialty contractors may practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting Maintenance Specialty Contractor;
- Sign Specialty Electrical Contractor;
- Residential Electrical Contractor;
- Limited Energy Systems Specialty Contractor;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems Contractor.⁵⁷

⁵⁰ See also The Florida Legislature, *2020 Local Government Financial Handbook supra* note 6.

⁵¹ Sections 489.105 and 489.117(4), F.S.

⁵² See Sections 489.505(3) and 489.507, F.S.

⁵³ See s. 489.505(16), F.S.

⁵⁴ Sections 489.505(12) and 489.537(7), F.S.

⁵⁵ Sections 489.505(1) and (2), F.S.

⁵⁶ Sections 489.507(3) and 489.511(4), F.S.

⁵⁷ Sections 489.505(19) and 489.511(4), F.S.; See Fla. Admin. Code R. 61G6-7.001.

Contractor Licensing – Handyman Exemption

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning it is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions.⁵⁸

Journeyman Licenses

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate or issue a license to a journeyman.⁵⁹

However, under ch. 489, F.S., a tradesman may be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions (license reciprocity) without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). If eligible for license reciprocity, a journeyman with a valid, active journeyman license issued by a county or municipality in Florida need not take any additional examinations or pay additional license fees and may work in the:

- Plumbing/pipe fitting, mechanical, or HVAC trades;⁶⁰ or
- Electrical and alarm system trades.⁶¹

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:⁶²

- Scoring at least 75 percent on an approved proctored examination for that construction trade;
- Completing a registered apprenticeship program and demonstrating four years of verifiable practical experience in the particular trade, or alternatively demonstrating six years of such experience in the particular trade;

⁵⁸ Other exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation; employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge; certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances; certain public utilities, on construction, maintenance, and development work by employees; property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000; work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.; registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.; work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements; certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements *See* s. 489.103, F.S., for additional exemptions.

⁵⁹ Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

⁶⁰ Section 489.1455, F.S.

⁶¹ Section 489.5335, F.S.

⁶² Sections 489.1455 and 489.5335, F.S.

- Completing coursework approved by the Florida Building Commission specific to the discipline within the required time frame; and
- Not having a license suspended or revoked within the last five years.

A local government may charge up to \$25 as a registration fee for reciprocity.⁶³

Residency Requirements for Contracting Licenses

Some local governments have adopted policies to promote the usage of local residents for contracting activities within their jurisdictions. For example, it is the policy of Miami-Dade County that, except where federal or state laws or regulations mandate to the contrary, all contractors and subcontractors of any tier performing on a county construction contract must satisfy the requirements of the Miami-Dade County Residents First Training and Employment Program.⁶⁴ These requirements include that the contractor will make its best reasonable efforts to promote employment opportunities for local residents and seek to achieve a project goal of having 51 percent of all construction labor hours performed by Miami-Dade County residents.⁶⁵

III. Effect of Proposed Changes:

Section 1 creates s. 163.211, F.S., to define the following terms:

- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.
- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

This section of the bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

- The local licensing requirements for an occupation are enacted before January 1, 2021; or
- The licensing of occupations by local governments is authorized by general law.

However, after July 1, 2023, the exception for local government licensing of occupations imposed by a local government expires. After that date, local government licensing of occupations is preempted to the state.

In addition, this section of the bill prohibits local governments that license an occupation from imposing additional licensing requirements on that occupation and from modifying such licensing. Under the bill, any local licensing of an occupation that is not imposed before January 1, 2021 or otherwise authorized by general law does not apply and may not be enforced.

⁶³ See ss. 489.1455, F.S., and 489.5335, F.S.

⁶⁴ See Code of Miami Dade County Florida, Chapter 2, Article I, Section 2.11.17, available at https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-11.17REFITREMPR (last visited Mar. 17, 2021).

⁶⁵ *Id.* at paragraph (5)(a)(ii) of Article I, Section 2.11.17.

Section 2 amends s. 489.117, F.S., relating to registration of specialty contractors to provide that persons whose job scope is outside the contractor trades or certified specialty trades need not register with the Construction Industry Licensing Board (CILB). A county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB, or the plumbing, pipefitting, mechanical, or HVAC trades of a journeyman under s. 489.1455(1), F.S.

The bill specifically prohibits counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

Sections 3 and 4 amend ss. 489.1455 and 489.5335, F.S., to authorize counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades, as well as the electrical and alarm system trades, which is the current practice by counties and municipalities. Therefore, local journeyman licensing is excepted from the preemption of local licensing to the state, as provided in the bill.

Section 5 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2020-2021, is forecast at \$2.2 million.⁶⁶

Under this bill, municipalities and counties that collect licensing fees may realize a reduction in revenues as a result of the prohibition against altering existing licensing requirements, including fees. If the amount of revenue lost due to these effects is determined to exceed \$2.2 million in the aggregate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

⁶⁶ 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 March 10, 2021). Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

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:

Certain professionals will not be required to pay local licensing and/or examination fees due to the preemption of occupational licensure to the state. This may have a positive impact on the number of individuals practicing certain professions. The impact on construction costs and workers' wages is indeterminate.

C. Government Sector Impact:

The bill will have indeterminate impact on local government costs and revenues linked to licensing. Under the bill, local governments are not authorized to increase existing license fees after January 1, 2021, and the authority of local governments to license occupations and collect license fees expires on July 1, 2023.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that local occupational licensing that is not authorized under s. 163.211, F.S., created by the bill, or otherwise authorized by general law "does not apply and may not be enforced." *See* lines 50 to 53 of the bill. These authorizations do not address occupational licensing imposed by local governments that may be authorized by special act of the Legislature (previously or in the future), or licensing imposed by local ordinance for a purpose such as protection of water quality.

As an example, the Pinellas County Construction Licensing Board was originally established in 1975 by special act, which was last revised in 2018 by special act of the Legislature.⁶⁷ Similarly, in 2008 Lee County adopted an ordinance regulating landscape management practices, including registration of landscaping businesses and certain landscapers, and completion of certain training.⁶⁸ A stated purpose of this ordinance is to meet federal and state water quality standards and to minimize the detrimental impacts on the county's lakes, estuaries, wetlands, the Caloosahatchee River, and the Gulf of Mexico.⁶⁹ Similar requirements exist for drilling of elevator shafts and water wells,⁷⁰ to avoid cross contamination of local aquifers.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.117, 489.1455, and 489.5335.

This bill creates s. 163.211 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 Regulated Industries Committee on March 16, 2021:

The committee substitute:

- Excepts from preemption all local licensing ordinances imposed before **January 1, 2021**, rather than **July 1, 2021** as stated in the bill;
- Includes a prohibition against local licensing for the job scope of “handyman services;” and
- Includes a technical revision to refer to “canvas awning ***and*** ornamental iron installation” (rather than “canvas awning ***or*** ornamental iron installation.”)

- B. **Amendments:**

None.

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

⁶⁷ See ch. 2018-179, Laws of Florida. See the Pinellas County Construction Licensing Board (PCCLB), *Description of PCCLB Contractor Classifications*, available at <http://www.pccclb.com/pdf/contractor-class.pdf>, at p. 9, for the classifications adopted by PCCLB rule (last visited Mar. 17, 2021). The nonrefundable fees for contractors are \$250 for initial application; \$250 for contractors' examinations application; and \$250 for contractors' reciprocity applications. The nonrefundable fees for journeymen are \$75 for a journeyman examination application and \$75 for a journeyman reciprocity application (same as initial licensing fee required of all PCCLB-licensed contractors). See [Pinellas County, Florida, Pinellas County Construction Licensing Board - Applications for Examination / Reciprocity \(pccclb.com\)](http://www.pccclb.com/pdf/contractor-class.pdf) (last visited Mar. 17, 2021).

⁶⁸ See Lee County Ordinance No. 08-08, available at <https://www.leegov.com/boccc/ordinances/08-08.pdf> (last visited Mar. 17, 2021).

⁶⁹ *Id.* at 3 (Section Two).

⁷⁰ See Lee County Ordinance No. 16-06, available at <https://www.leegov.com/boccc/Ordinances/16-06.pdf> (last visited Mar. 17, 2021).

By the Committee on Regulated Industries; and Senator Perry

580-02944-21

2021268c1

A bill to be entitled

An act relating to preemption of local occupational licensing; creating s. 163.211, F.S.; defining terms; preempting licensing of occupations to the state; providing exceptions; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain local licensing that does not meet specified criteria does not apply and may not be enforced; amending s. 489.117, F.S.; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; prohibiting local governments from requiring certain specialty contractors to obtain a license under specified circumstances; specifying job scopes for which a local government may not require a license; amending ss. 489.1455 and 489.5335, F.S.; authorizing counties and municipalities to issue certain journeyman licenses; providing an effective date.

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

Section 1. Section 163.211, Florida Statutes, is created to read:

163.211 Licensing of occupations preempted to state.—

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

(a) "Licensing" means any training, education, test, certification, registration, or license that is required for a

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

580-02944-21

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person to perform an occupation in addition to any associated fee.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.—The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.—A local government that licenses occupations and retains such licensing as set forth in paragraph (2) (a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4) (a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one

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59 of the contractor categories defined in s. 489.105(3)(a)-(o), or
 60 the job scope of one of the certified specialty contractor
 61 categories established by board rule, is not required to
 62 register with the board ~~to perform contracting activities within~~
 63 ~~the scope of such specialty license. A local government, as~~
 64 defined in s. 163.211, may not require a person to obtain a
 65 license for a job scope which does not substantially correspond
 66 to the job scope of one of the contractor categories defined in
 67 s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1).
 68 For purposes of this section, job scopes for which a local
 69 government may not require a license include, but are not
 70 limited to, painting; flooring; cabinetry; interior remodeling;
 71 driveway or tennis court installation; handyman services;
 72 decorative stone, tile, marble, granite, or terrazzo
 73 installation; plastering; stuccoing; caulking; and canvas awning
 74 and ornamental iron installation.

75 Section 3. Section 489.1455, Florida Statutes, is amended
 76 to read:

77 489.1455 Journeyman; reciprocity; standards.—

78 (1) Counties and municipalities are authorized to issue
 79 journeyman licenses in the plumbing, pipe fitting, mechanical,
 80 or HVAC trades.

81 ~~(2)(1)~~ An individual who holds a valid, active journeyman
 82 license in the plumbing, pipe fitting ~~plumbing/pipe fitting,~~
 83 mechanical, or HVAC trades issued by any county or municipality
 84 in this state may work as a journeyman in the trade in which he
 85 or she is licensed in any county or municipality of this state
 86 without taking an additional examination or paying an additional
 87 license fee, if he or she:

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580-02944-21

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88 (a) Has scored at least 70 percent, or after October 1,
 89 1997, at least 75 percent, on a proctored journeyman Block and
 90 Associates examination or other proctored examination approved
 91 by the board for the trade in which he or she is licensed;

92 (b) Has completed an apprenticeship program registered with
 93 a registration agency defined in 29 C.F.R. s. 29.2 and
 94 demonstrates 4 years' verifiable practical experience in the
 95 trade for which he or she is licensed, or demonstrates 6 years'
 96 verifiable practical experience in the trade for which he or she
 97 is licensed;

98 (c) Has satisfactorily completed specialized and advanced
 99 module coursework approved by the Florida Building Commission,
 100 as part of the building code training program established in s.
 101 553.841, specific to the discipline or, pursuant to
 102 authorization by the certifying authority, provides proof of
 103 completion of such coursework within 6 months after such
 104 certification; and

105 (d) Has not had a license suspended or revoked within the
 106 last 5 years.

107 ~~(3)(2)~~ A local government may charge a registration fee for
 108 reciprocity, not to exceed \$25.

109 Section 4. Section 489.5335, Florida Statutes, is amended
 110 to read:

111 489.5335 Journeyman; reciprocity; standards.—

112 (1) Counties and municipalities are authorized to issue
 113 journeyman licenses in the electrical and alarm system trades.

114 ~~(2)(1)~~ An individual who holds a valid, active journeyman
 115 license in the electrical or alarm system trade issued by any
 116 county or municipality in this state may work as a journeyman in

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580-02944-21

2021268c1

117 the trade in which he or she is licensed in any other county or
118 municipality of this state without taking an additional
119 examination or paying an additional license fee, if he or she:

120 (a) Has scored at least 70 percent, or after October 1,
121 1997, at least 75 percent, on a proctored journeyman Block and
122 Associates examination or other proctored examination approved
123 by the board for the ~~electrical~~ trade in which he or she is
124 licensed;

125 (b) Has completed an apprenticeship program registered with
126 a registration agency defined in 29 C.F.R. s. 29.2 and
127 demonstrates 4 years' verifiable practical experience in the
128 ~~electrical~~ trade for which he or she is licensed, or
129 demonstrates 6 years' verifiable practical experience in the
130 ~~electrical~~ trade for which he or she is licensed;

131 (c) Has satisfactorily completed specialized and advanced
132 module coursework approved by the Florida Building Commission,
133 as part of the building code training program established in s.
134 553.841, specific to the discipline, or, pursuant to
135 authorization by the certifying authority, provides proof of
136 completion of such curriculum or coursework within 6 months
137 after such certification; and

138 (d) Has not had a license suspended or revoked within the
139 last 5 years.

140 ~~(3)(2)~~ A local government may charge a registration fee for
141 reciprocity, not to exceed \$25.

142 Section 5. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 30, 2021

Meeting Date

518

Bill Number (if applicable)

Topic Use of Drones by Govt Agencies

Amendment Barcode (if applicable)

Name Jennifer Cook Pritt

Job Title Deputy Executive Director

Address PO Box 14038

Phone 8502193631

Street

Tallahassee

FL

32317

Email jpritt@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

March 30, 2021

Meeting Date

SB518

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Ray Colburn

Job Title Executive Director

Address 5289 Palm Drive

Phone 407-468-6622

Street

Melbourne Beach

FL

32951

Email ray@ffca.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 518

INTRODUCER: Senator Diaz

SUBJECT: Drones

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state.

Currently, s. 934.50, F.S., prohibits a:

- Law enforcement agency from using a drone to gather evidence or other information.
- Person, or state or local entity, from using a drone to capture images of private property in violation of a person's reasonable expectation of privacy.

However, these prohibitions are subject to exceptions, and the bill adds an exception. Specifically, under the bill, s. 943.50, F.S., no longer prohibits a state agency or political subdivision to use a drone for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

The bill takes effect July 1, 2021.

II. Present Situation:

Overview

Section 934.50, F.S., prohibits a law enforcement agency from using a drone to gather information, and prohibits any person or state entity from using a drone to record an image of a person in violation of the person's reasonable expectation of privacy.¹ However, these prohibitions are subject to several exceptions, including use for aerial mapping, to capture

¹ Section 934.50(3), F.S.

images for a utility company or communications services provider, or for specified law enforcement purposes.²

Federal law, unlike Florida law, does not include a statute or regulation expressly targeting governmental drone use that might invade a citizen's privacy. However, federal law does include various restrictions and regulations on drone use, including airspace restrictions and licensing requirements.

Drones

A drone, also called an Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.³

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.⁴ They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.⁵

Federal Law and Regulation

Federal law and regulation govern who may fly a drone, as well as when and where the person may do so. The FAA is responsible for regulating aircraft, including drones, that fly in U.S. airspace.⁶ In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to nongovernmental drones by September 2015.⁷

Neither federal law nor regulation categorically prohibit governmental agents to operate a drone over an area damaged by a hurricane, flood, wildfire, or other natural disaster. However, the FAA often implements Temporary Flight Restrictions around wildfires to protect firefighting

² See s. 934.50(4), F.S., for the list of exceptions.

³ Section 934.50(2), F.S.

⁴ 72 FR 6689, Federal Aviation Administration (FAA), *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007, available at <https://www.federalregister.gov/documents/2007/02/13/E7-2402/unmanned-aircraft-operations-in-the-national-airspace-system>.

⁵ *Id.*

⁶ See 49 U.S.C. s. 40103(b)(1) and (2).

⁷ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last viewed February 3, 2021).

aircraft.⁸ Additional FAA airspace restrictions include the area around Washington, D.C., sports stadiums, and airports.⁹

Choice of Regulatory Framework for Governmental Operators

A governmental agent may operate a drone under one of two legal frameworks — that for “public unmanned aircraft systems,” or that for “small unmanned aircraft systems.” The framework for small unmanned aircraft systems is much more extensive, and it is the same framework under which a private citizen would operate a drone.¹⁰

The legal framework for “public unmanned aircraft systems” consists primarily of one statute.¹¹ Under this statute, a governmental operator may seek a certificate of authorization or certificate of waiver from the FAA.¹² If granted, the operator may operate a drone weighing 4.4 pounds or less.¹³ The drone must be kept within the line of sight of the operator and below 400 feet, and may only be operated during the day.¹⁴

Many governmental operators choose instead to operate their drones as “small unmanned aircraft systems.” These drones are subject to extensive regulations, codified in the Code of Federal Regulations, and first promulgated in 2016.¹⁵ These regulations were recently substantially amended, and the amendments take effect in March.¹⁶

As of March 16, 2021, operators of small drones (those under 55 pounds) will no longer need to seek special authorization before operating a drone that passes over people, including people in moving vehicles.¹⁷ However, the regulations pertaining to these flights vary somewhat,

⁸ FAA, *FAA Drones and Wildfires Digital Toolkit*, available at https://www.faa.gov/uas/media/FAA_drones_wildfires_toolkit.pdf (last viewed February 3, 2021). Moreover, Congress has authorized the FAA to impose a civil penalty of up to \$20,000 against any drone pilot who interferes with wildfire suppression, law enforcement, or emergency response operations. FAA, *FAA Targets UAS Violators for Enforcement*, available at <https://www.faa.gov/news/updates/?newsId=91706> (last visited Feb. 4, 2021).

⁹ FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, July 16, 2020, available at https://www.faa.gov/uas/where_to_fly/airspace_restrictions/ (last viewed February 7, 2021); *see also* FAA Drones and Wildfires Digital Toolkit, available at https://www.faa.gov/uas/media/FAA_drones_wildfires_toolkit.pdf (last viewed February 3, 2021).

¹⁰ FAA, *Drones in Public Safety—A Guide to Starting Operations* (Feb. 2019), available at https://www.faa.gov/uas/public_safety_gov/media/Law_Enforcement_Drone_Programs_Brochure.pdf; FAA, *A “UAS Primer for Public Safety”, Public Aircraft OPS VS Part 07*, (Jan. 2020), available at <https://www.faasafety.gov/files/gslac/library/documents/2020/Jan/233377/Public%20Safety%20PAO%20vs%20Part%20107%20Primer%20v2.1.pdf>. See 49 U.S.C. ch. 448 for the federal statutes pertaining to drones. The primary statute relating to public unmanned aircraft systems is 49 U.S.C. s. 44806, and the primary statute relating to small unmanned aircraft systems is 49 U.S.C. s. 44802. The rules authorized by 49 U.S.C. s. 44802 are at 14 C.F.R. 107.

¹¹ 49 U.S.C. s. 44806.

¹² *See* 49 U.S.C. s. 44806(a)(1).

¹³ 49 U.S.C. s. 44806(b)(2)(C).

¹⁴ *Id.*

¹⁵ *See* 14 C.F.R. 107.

¹⁶ FAA, *Operation of Small Unmanned Aircraft Systems Over People*, 86 FR 4314, available at <https://www.federalregister.gov/d/2020-28947/p-85>.

¹⁷ *Id.* Prior to this change, a drone operator who did not have special authorization could not fly a drone over people who were not in covered structure, stationary vehicle, or participating in the drone operation.

depending on the size of the craft.¹⁸ Moreover, operating a drone in *sustained* flight over an open-air assembly of people remains subject to restrictions.¹⁹ Under these restrictions, a drone must be equipped with individual identification as specified in rule and must continuously transmit specified information regarding its location.²⁰

However, these restrictions are subject to waiver by the FAA. Thus, if an operator receives a waiver, he or she does not have to meet the normal requirements for operating a drone over people.²¹

Florida Law

Florida’s Prohibition on Certain Drone Uses – Section 934.50, F.S.

Section 934.50, F.S., is the “Freedom from Unwarranted Surveillance Act.” Subject to exceptions, it prohibits a law enforcement agency²² from using a drone to gather information and prohibits private or governmental entities from using a drone to capture images in violation of a person’s reasonable expectation of privacy. For the purposes of this statute, a real property owner, tenant, occupant, invitee, or licensee is presumed to have a reasonable expectation of privacy from drone surveillance²³ while on the property.²⁴ However, this presumption only applies while the person is “not observable by persons located at ground level in a place where they have a right to be.”²⁵

Section 934.50, F.S., includes a list of ten exceptions to its ban on drone surveillance. These exceptions include specified uses by law enforcement, utilities, firefighters, businesses, and individuals. The statute provides that it does not prohibit drone use for aerial mapping, for specified purposes by a utility company, for the delivery of cargo, or for surveying of wildlife and vegetation by a non-law enforcement employee of the Florida Fish and Wildlife Commission.²⁶ With regard to law enforcement, the statute does not prohibit drone use that is

¹⁸ See 14 C.F.R. 107.110-165 (effective March 16, 2021), available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a70adf1ff1545784a28e989f2ddeae94&mc=true&node=20210115y1.103>. These provisions set forth Categories 1 through 4, each with its own requirements.

¹⁹ The FAA describes sustained flight to include “hovering above the heads of persons gathered in an open-air assembly, flying back and forth over an open-air assembly, or circling above the assembly in such a way that the small unmanned aircraft remains above some part of the assembly.” FAA, *Operation of Small Unmanned Aircraft Over People*, 86 FR 4314, available at <https://www.federalregister.gov/d/2020-28947/p-208>.

²⁰ See 14 C.F.R. 89.110 and 89.115(a) (effective March 16, 2021) for the details of these requirements, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a70adf1ff1545784a28e989f2ddeae94&mc=true&node=pt14.2.89&rgn=div5>.

²¹ 14 C.F.R. 107.205.

²² A law enforcement agency is defined in s. 934.50(2)(d), F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

²³ Surveillance is defined in s. 934.50(2)(e), F.S.: With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or with respect to privately owned real property, the observation of such property’s physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

²⁴ Section 934.50(3)(b), F.S.

²⁵ *Id.*

²⁶ See s. 934.50(4), F.S., for a complete list of the exceptions, including the specific circumstances required for each exception.

pursuant to a search warrant or when the agency has a reasonable suspicion that “swift action” is necessary to prevent the imminent loss of life, escape of a prisoner, or other specified circumstance.²⁷

Section 934.50, F.S. provides several remedies for victims of prohibited drone use.²⁸ In order to enforce the prohibition in s. 934.50, F.S., on the wrongful use of a drone by law enforcement, the statute provides that evidence collected in violation of the statute is inadmissible in court. Moreover, an aggrieved party may initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.²⁹ Additionally, a victim may recover compensatory damages against any person or entity that violates s. 934.50, F.S., and may be entitled to punitive damages.³⁰

Fire Department Use of Drones

According to an October 2018 news article, fire departments use UAVs for reconnaissance of wildfires and motor vehicle accident scenes, hazmat incidents, and hot spot identification at structure fires. In addition to the reconnaissance function and hot spot identification, additional uses for UAVs include:

- Search and rescue, even in urban settings;
- Preplanning with aerial photos and video identifying water supply sources, utility shutoffs, and apparatus location planning;
- Winter and ice rescue; and
- Disaster assessment and post-disaster reconnaissance after weather events such as floods or tornados.³¹

The Mesa Fire and Medical Department in Mesa, Arizona, has also used drones in a variety of capacities, including:

- Gaining a 360-degree perspective on damaged structures;
- Surveying buildings to provide hazard assessments for property owners;
- Water rescue operations and flood damage assessment;
- Assisting with a search for a missing kindergarten teacher; and
- Demonstrating how drones outfitted with special meters and cameras to identify lethal chemicals in hazmat situations can help keep first responders safe.³²

²⁷ Section 934.50(4)(b) and (c), F.S. Section 934.50, F.S., also does not prohibit the use of a drone to counter a high risk of a terrorist attack if the Secretary of the U.S. Department of Homeland Security indicates that such a risk exists. Section 934.50(4)(a), F.S.

²⁸ See s. 934.50(5), F.S.

²⁹ Section 934.50(5)(a), F.S.

³⁰ See s. 934.50(5), F.S., for the complete list of remedies.

³¹ Fire Apparatus & Emergency Equipment, Alan M. Petrillo, *Fire Department Drones Serve a Variety of Needs on Incident Scenes*, October 1, 2018, available at <https://www.fireapparatusmagazine.com/fire-apparatus/fire-department-drones-serve-a-variety-of-needs-on-incident-scenes/#gref> (last viewed February 3, 2021).

³² Wayne Schutsky, East Valley Tribune, *Ariz. Fire, EMS Leads the Way with Drone Use*, December 20, 2017, available at <https://www.ems1.com/ems-products/technology/articles/370989048-Ariz-fire-EMS-leads-the-way-with-drone-use/> (last viewed February 3, 2021).

In Brevard County, Fire Rescue personnel have been trained to test for the FAA drone pilot certification³³ so they can conduct search-and-rescue operations, ocean rescue, map brush fires, and examine burning buildings to identify safe entry points for firefighters using drones.³⁴

Other Governmental Uses for Drones

Drones are becoming useful for governmental functions outside policing. For example, the Daytona Beach Police Department utilized its drones to document the state of the city's infrastructure immediately before and after Hurricane Irma came through in September 2017 to provide the Federal Emergency Management Agency with the proof necessary to obtain funding for rebuilding. Additionally, the department was able to aid first responders in navigating the fastest and safest routes to those in need of aid by providing a birds-eye view of downed power lines, unstable infrastructure, and blocked roads in the wake of the storm.³⁵

III. Effect of Proposed Changes:

SB 518 provides an additional exception to the statutory ban on certain uses of drones by law enforcement agencies, fire departments, state agencies, and political subdivisions of the state.

Currently, s. 934.50, F.S., prohibits a:

- Law enforcement agency from using a drone to gather evidence or other information.
- Person, or state or local entity, from using a drone to capture images of private property in violation of a person's reasonable expectation of privacy.

However, these prohibitions are subject to exceptions, and the bill adds an exception. Specifically, under the bill, s. 943.50, F.S., no longer prohibits a state agency or political subdivision to use a drone for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

The bill takes effect July 1, 2021.

³³ Federal Aviation Administration, *Become a Drone Pilot*, available at https://www.faa.gov/uas/commercial_operators/become_a_drone_pilot/ (last viewed February 3, 2021).

³⁴ Rick Neale, Florida Today, *Florida Tech drone training takes flight for Brevard County firefighters, lifeguards*, November 30, 2018, available at <https://www.floridatoday.com/story/news/2018/11/30/florida-tech-drone-training-takes-flight-brevard-firefighters/2140086002/> (last viewed February 3, 2021).

³⁵ Police1.com, Jinnie Chua, *Why drones should be part of every PD's disaster response plan*, February 22, 2018, available at <https://www.policeone.com/2018-guide-drones/articles/471474006-Why-drones-should-be-part-of-every-PDs-disaster-response-plan/> (last viewed February 3, 2021); for additional ways the Daytona Beach Police Department has utilized its drones see Stephen Rice, Forbes.com, *10 Ways That Police Use Drones To Protect And Serve*, October 7, 2019, available at <https://www.forbes.com/sites/stephenrice1/2019/10/07/10-ways-that-police-use-drones-to-protect-and-serve/?sh=5a1b31d96580> (last viewed January 8, 2021); and Ginger Pinholster, Fox News 35, Orlando, *Eyes in the Sky and Embry-Riddle Training Help Police End Hotel Standoff*, September 27, 2019, available at <https://news.erau.edu/headlines/eyes-in-the-sky-and-embry-riddle-training-help-police-end-hotel-standoff> (last viewed February 3, 2021).

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 bill could lead to cost-savings by state and local governments. The bill provides additional exceptions to the statutory ban on drone use by governmental agents. Accordingly, these entities may be able to use drones, for instance, to more efficiently assess an area ravaged by a hurricane or fire.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Supreme Court has recently ruled that a pandemic is a “natural emergency” within the meaning of s. 252.34(8), F.S.³⁶ It is unclear whether a pandemic is within the meaning of “natural disaster” as used by the bill.

VIII. Statutes Affected:

This bill substantially amends section 934.50 and reenacts section 330.41 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.

³⁶ “Natural emergency” means 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. Section 252.34(8), F.S. *See Abramson v. DeSantis*, Case No.: SC20-646, 202 WL 3464376 (Fla. June 25, 2020).

By Senator Diaz

36-00595-21

2021518__

A bill to be entitled

An act relating to drones; amending s. 934.50, F.S.; expanding the authorized uses of drones by a state agency or political subdivision to include the assessment of damage due to natural disasters; reenacting s. 330.41(4)(c), F.S., relating to unmanned aircraft systems, to incorporate the amendment made to s. 934.50, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (3) of section 934.50, Florida Statutes, is amended, and paragraph (1) is added to subsection (4) of that section, to read:

934.50 Searches and seizure using a drone.—

(3) PROHIBITED USE OF DRONES.—Except as provided under subsection (4):

(a) A law enforcement agency may not use a drone to gather evidence or other information.

(b) A person, a state agency, or a political subdivision as defined in s. 11.45 may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent. For purposes of this section, a person is presumed to have a reasonable expectation of privacy on his or

Page 1 of 2

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

36-00595-21

2021518__

her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(1) By a state agency or political subdivision for the assessment of damage due to a hurricane, a flood, a wildfire, or any other natural disaster.

Section 2. For the purpose of incorporating the amendment made by this act to section 934.50, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 330.41, Florida Statutes, is reenacted to read:

330.41 Unmanned Aircraft Systems Act.—

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(c) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting under the direction of such law enforcement agency.

3. An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

Section 3. This act shall take effect July 1, 2021.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/2021

Meeting Date

SB 694

Bill Number (if applicable)

Topic DISPLACEMENT OF PRIVATE WASTE COMPANIES

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE

Phone 850 681 1065

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email keynacory@pacconsulhants.com

Speaking: For Against Information

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

Representing NATIONAL WASTE + RECYCLING ASSN. FL CHAPTER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

694

Bill Number (if applicable)

314954

Amendment Barcode (if applicable)

Topic _____

Name Holly Parker Curry

Job Title FL Policy Manager

Address 1229 Mitchell Ave

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City

State

Zip

Phone 850-567-3393

Email hparker@surfrider.org

Speaking: For Against Information

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

Representing Surfrider Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

694

Bill Number (if applicable)

314954

Amendment Barcode (if applicable)

Topic SB 694 - DEP Study Amendment

Name TRAVIS MOORE

Job Title _____

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Street

Phone 727.421.6907

St. Petersburg FL 33731
City State Zip

Email travis@moore-relations.com

Speaking: For Against Information

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

Representing Oceana

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

SB694

Bill Number (if applicable)

#131904

Amendment Barcode (if applicable)

Topic Single Use Plastics

Name Laura Reynolds

Job Title Policy Representative

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Phone 786-543-1926

City

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State

FL

Zip

33133

Email lreynolds@conservation

conceptsite.org

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Plastics Free Initiative / Women's Club's

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 694

INTRODUCER: Community Affairs Committee and Senators Rodrigues and Perry

SUBJECT: Waste Management

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 694 amends the requirement that a local government must either provide three years' notice before its solid waste collection service displaces a private waste company or pay the displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service. The bill requires a local government that displaces a solid waste collection service to provide a three-year notice period *and* pay the displaced company an amount equal to the company's preceding 18 months' gross receipts at the end of the notice period. The bill deletes a provision stating that a local government and a private waste company may voluntarily negotiate a different notice period or amount of compensation.

The bill also requires the Department of Environmental Protection to review and update the department's 2010 Retail Bags Report. The department must submit the updated report with conclusions and recommendations to the Legislature by December 31, 2021. Until such time that the Legislature adopts the recommendations of the department, a local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

The bill takes effect July 1, 2021.

II. Present Situation:

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.² Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.³

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.⁴ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.⁵

Solid Waste

Counties have the authority to provide and regulate waste and sewage collection and disposal.⁶ A county may require that any person within the county demonstrate the existence of some arrangement or contract by which the person's solid waste⁷ will be disposed of in a manner consistent with county ordinance or state or federal law.⁸ Counties also have authority to adopt ordinances that govern the disposal of solid waste generated outside the county at the county's solid waste disposal facility.⁹

The Department of Environmental Protection (DEP) is responsible for implementing and enforcing the solid waste management program, which provides guidelines for the storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state.¹⁰ The program is required to include procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.¹¹

¹ FLA. CONST., art. VIII, s. 1.(f).

² FLA. CONST., art. VIII, s. 1.(g).

³ FLA. CONST., art. VIII, s. 2.(b); *see also* s. 166.021(1), F.S.

⁴ Section 125.01(1)(d)(e)(f) and (k)1., F.S.

⁵ Section 166.021(3), F.S.

⁶ Section 125.01(1)(k), F.S.

⁷ Section 403.703(36), F.S. "Solid waste" is defined as sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

⁸ Section 125.01(1)(k)2., F.S.

⁹ Section 403.706(1), F.S.

¹⁰ Section 403.705, F.S.

¹¹ Section 403.705(2)(a), F.S.

Counties are responsible for operating solid waste disposal facilities, which are permitted through DEP, in order to meet the needs of the incorporated and unincorporated areas of the county¹² and may contract with other persons to fulfill some or all of its solid waste responsibilities.¹³ Each county must ensure that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means.¹⁴ In providing services or programs for solid waste management, local governments and state agencies are encouraged to use the most cost-effective means for providing services and are encouraged to contract with private entities for any or all such services or programs to assure that those services are provided on the most cost-effective basis.¹⁵ Local governments are expressly prohibited from discriminating against privately owned solid waste management facilities solely because they are privately owned.¹⁶

Competition with Private Companies

Section 403.70605, F.S., was enacted in 2000 to address concerns of private waste management companies regarding competition with local governments' solid waste departments for third party service contracts.¹⁷ Private companies were concerned that public entities were able to subsidize their costs with funds from other government operations, allowing the public entities to unfairly compete for contracts.¹⁸

Solid Waste Collection Services in Direct Competition

Under s. 403.70605, F.S., local governments providing specific solid waste collection services in direct competition with a private company must comply with local environmental, health, and safety standards applicable to private companies providing competitive collection services.¹⁹ Local governments may not enact or enforce any license, permit, registration procedure, or associated fee that:

- Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and
- Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services, excluding zoning, land use, or comprehensive plan requirements.²⁰

When providing solid waste collection services outside of their jurisdiction in competition with private companies, local governments are prohibited from instituting predatory pricing schemes.²¹

¹² Section 403.706(1), F.S.

¹³ Section 403.706(8), F.S.

¹⁴ Section 403.706(3), F.S.

¹⁵ Section 403.7063, F.S.

¹⁶ *Id.*

¹⁷ Chapter 2000-304, s. 1, Laws of Fla.

¹⁸ See Florida House of Representatives, Committee on Community Affairs, *CS/HB 1425 Final Analysis*, p. 2 (May 12, 2000), available at <http://archive.flsenate.gov/data/session/2000/House/bills/analysis/pdf/HB1425S1Z.CA.pdf> (last visited Feb. 5, 2021).

¹⁹ Section 403.70605(1)(a), F.S.

²⁰ Section 403.70605(1)(a)2., F.S.

²¹ Section 403.70605(2), F.S.; see also ss. 542.18 and 542.19, F.S.

A private company in competition with a local government has legal remedies against local government action that violates the statute, including injunctive relief.²² The private company must notify the local government of the violation and give them 30 days to respond.²³ No injunctive relief is granted if the official action has a reasonable relationship to the health, safety, or welfare of the citizens of the local government, unless a court finds the actual or potential anticompetitive effects outweigh the public benefits of the challenged action.²⁴

Displacement of Private Garbage, Trash, and Refuse Collection Services

A local government, or group of local governments, may not displace a private company²⁵ that provides garbage, trash, or refuse collection without following the requirements under s. 403.70605, F.S. “Displacement” means a local government’s provision of a collection service which prohibits a private company from continuing to provide the same service it was providing when the decision to displace was made.²⁶

Displacement does not include:

- Public and private sector competition for individual contracts;
- A local government refusing to renew an expiring contract with a private company;
- Local government action in response to an act by a private company that is a threat to public health or safety or results in a substantial public nuisance;
- Local government action in response to material breach by a private company of its contract with the local government;
- Refusal by a private company to continue operations under the terms and conditions of existing agreement during the three-year notice period;
- Contracts between local governments and private waste companies absent an ordinance that displaces another private company;
- A majority of property owners in the displacement area petitioning for the local governing body to take over collection services;
- Municipal annexations honoring existing solid waste contracts pursuant to law; or
- A private company licensed to provide service for a limited time whose license expires and is not renewed by the local government.²⁷

Before displacing a private company, a local government must first hold at least one public hearing, publicly noticed with a separate notice to private companies providing the service within the jurisdiction, on the advisability of the local government providing the service.²⁸ The local government must take measures to provide services within one year of the final public hearing.²⁹ The local governments must provide three years’ notice to a private company before it engages in the actual provision of the service that displaces the company.³⁰ As an alternative to delaying

²² Section 403.70605(1)(b) & (2)(c), F.S.

²³ Section 403.70605(1)(b), F.S.

²⁴ *Id.*

²⁵ Section 403.70605(4)(b), F.S. “Private company” is defined as “any entity other than a local government or other unit of government that provides solid waste collection services.”

²⁶ Section 403.70605(3)(a), F.S.

²⁷ *Id.*

²⁸ Section 403.70605(3)(b), F.S.

²⁹ Section 403.70605(3)(c), F.S.

³⁰ *Id.*

displacement three years, the local government may pay a displaced company an amount equal to the company's preceding 15 months' gross receipts for the displaced service in the displacement area.³¹ The local government and the private company are not prohibited from voluntarily negotiating a different notice period or amount of compensation.³²

If a private company refuses to continue operations under the terms and conditions of its existing agreement during the 3-year notice period, the company is no longer considered displaced and the notice period lapses.³³

Department of Environmental Protection Retail Bag Report

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature enacted s. 403.7033, F.S., in 2008 to require the Department of Environmental Protection (DEP) to analyze "the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments." Section 403.7033, F.S., required DEP to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010.³⁴

Additionally, s. 403.7033, F.S. includes a prohibition on local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP's recommendations.³⁵ To date, the Legislature has not adopted any recommendations contained in the report and the prohibition on any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags remains in effect.

III. Effect of Proposed Changes:

Section 1 amends s. 403.7033, F.S., to require the Department of Environmental Protection to review and update the department's 2010 Retail Bags Report. The department must submit the updated report with conclusions and recommendations to the Legislature by December 31, 2021. Until such time that the Legislature adopts the recommendations of the department, a local government, local governmental agency, or state governmental agency may not enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

Section 2 amends s. 403.70605, F.S., which establishes the process a local government must follow when its provision of a solid waste collection service displaces a private waste company. Under current law, a local government must either provide three years' notice to the private company before beginning the displacing service, or, as an alternative to delaying displacement for three years, the local government may pay the displaced company an amount equal to the

³¹ *Id.*

³² *Id.*

³³ Section 403.70605(3)(a)5., F.S.

³⁴ Section 403.7033, F.S.

³⁵ *Id.*

company's preceding 15 months' gross receipts for the displaced service. The bill requires local governments to provide the three years' notice *and* pay the private company an amount equal to its preceding 18 months' gross receipts at the end of the three-year notice period.

The bill deletes a provision stating that a local government and a private waste company may voluntarily negotiate a different notice period or amount of compensation.

Section 3 provides an effective date of July 1, 2021.

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:

There may be an indeterminate, positive economic impact on the private sector because the bill deletes the authorization in current law for local governments to pay the displaced company 15 months of gross receipts instead of providing three year's notice so that the displaced companies are assured 3 years' notice prior to displacement and 18 months of gross receipts when their service ends.

C. Government Sector Impact:

There may be an indeterminate, negative fiscal impact on local governments because the bill deletes the authorization in current law for local governments to pay the displaced

company 15 months of gross receipts instead of providing three year's notice so that the displaced companies are assured 3 years' notice prior to displacement and 18 months of gross receipts when their service ends.

The Department of Environmental Protection may incur nominal costs while reviewing and updating of its 2010 Retail Bags Report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.7033 and 403.70605.

IX. Additional Information:

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

CS by Community Affairs on March 30, 2021:

The committee substitute adds the provision requiring the Department of Environmental Protection to review and update the department's 2010 Retail Bags Report and changes the title of the bill to "an act relating to waste management."

- B. **Amendments:**

None.



131904

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

The Committee on Community Affairs (Polsky) recommended the following:

Senate Amendment (with title amendment)

Before line 17

insert:

Section 1. Section 403.7033, Florida Statutes, is amended to read:

403.7033 Departmental analysis of particular recyclable materials.—The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of



131904

11 Environmental Protection shall review and update the
12 department's Retail Bags Report 2010 to analyze ~~undertake an~~
13 ~~analysis of~~ the need for new or different regulation of
14 auxiliary containers, wrappings, or disposable plastic bags used
15 by consumers to carry products from retail establishments. The
16 update must ~~analysis shall~~ include input from state and local
17 government agencies, stakeholders, private businesses, and
18 citizens, and must ~~shall~~ evaluate the efficacy and necessity of
19 both statewide and local regulation of these materials. To
20 ensure consistent and effective implementation, the department
21 shall submit the updated a report with conclusions and
22 recommendations to the Legislature by December 31, 2021 ~~no later~~
23 ~~than February 1, 2010~~. Until ~~such time that~~ the Legislature
24 adopts the recommendations of the department or until July 1,
25 2022, whichever is earlier, a ~~no~~ local government, local
26 governmental agency, or state governmental ~~government~~ agency may
27 not enact any rule, regulation, or ordinance regarding use,
28 disposition, sale, prohibition, restriction, or tax of such
29 auxiliary containers, wrappings, or disposable plastic bags.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Delete lines 2 - 3

34 and insert:

35 An act relating to waste management; amending s.
36 403.7033, F.S.; requiring the Department of
37 Environmental Protection to review and update a
38 specified report on the regulation of certain
39 auxiliary containers, wrappings, and disposable



131904

40 plastic bags; requiring submittal of the report to the
41 Legislature by a specified date; prohibiting a local
42 government, local governmental agency, or state
43 governmental agency from enacting certain rules and
44 regulations during a specified timeframe; amending s.
45 403.70605, F.S.; requiring a



314954

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Polsky) recommended the following:

1 **Senate Substitute for Amendment (131904) (with title**
2 **amendment)**

3
4 Before line 17
5 insert:

6 Section 1. Section 403.7033, Florida Statutes, is amended
7 to read:

8 403.7033 Departmental analysis of particular recyclable
9 materials.—The Legislature finds that prudent regulation of
10 recyclable materials is crucial to the ongoing welfare of



11 Florida's ecology and economy. As such, the Department of
12 Environmental Protection shall review and update its 2010 report
13 on retail bags analyzing ~~undertake an analysis of~~ the need for
14 new or different regulation of auxiliary containers, wrappings,
15 or disposable plastic bags used by consumers to carry products
16 from retail establishments. The updated report must ~~analysis~~
17 ~~shall~~ include input from state and local government agencies,
18 stakeholders, private businesses, and citizens, and must ~~shall~~
19 evaluate the efficacy and necessity of both statewide and local
20 regulation of these materials. To ensure consistent and
21 effective implementation, the department shall submit the
22 updated a report with conclusions and recommendations to the
23 Legislature no later than December 31, 2021 ~~February 1, 2010~~.
24 Until such time that the Legislature adopts the recommendations
25 of the department, a ~~no~~ local government, local governmental
26 agency, or state governmental ~~government~~ agency may not enact
27 any rule, regulation, or ordinance regarding use, disposition,
28 sale, prohibition, restriction, or tax of such auxiliary
29 containers, wrappings, or disposable plastic bags.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Delete lines 2 - 3

34 and insert:

35 An act relating to waste management; amending s.
36 403.7033, F.S.; requiring the Department of
37 Environmental Protection to review and update its
38 report on retail bags and submit the updated report to
39 the Legislature by a specified date; amending s.



314954

40

403.70605, F.S.; requiring a

By Senator Rodrigues

27-00920-21

2021694__

1 A bill to be entitled
 2 An act relating to displacement of private waste
 3 companies; amending s. 403.70605, F.S.; requiring a
 4 local government to pay a specified amount of
 5 compensation to a displaced private waste company at
 6 the end of a specified notice period; removing a
 7 provision authorizing a local government to pay a
 8 specified amount of compensation to a private waste
 9 company as an alternative to delaying displacement for
 10 a specified period; removing a provision authorizing a
 11 local government and private waste company to
 12 negotiate such compensation and notice; providing an
 13 effective date.

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

17 Section 1. Paragraph (c) of subsection (3) of section
 18 403.70605, Florida Statutes, is amended to read:
 19 403.70605 Solid waste collection services in competition
 20 with private companies.—

21 (3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

22 (c) Following the final public hearing held under paragraph
 23 (b), but not later than 1 year after the hearing, the local
 24 government may proceed to take those measures necessary to
 25 provide the service. The A local government shall provide 3
 26 years' notice to the a private company before it engages in the
 27 actual provision of the service that displaces the company. At
 28 the end of the 3-year notice period ~~As an alternative to~~
 29 ~~delaying displacement 3 years,~~ the a local government shall may

Page 1 of 2

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

27-00920-21

2021694__

30 pay the a displaced company an amount equal to the company's
 31 preceding ~~18~~ 15 months' gross receipts for the displaced service
 32 in the displacement area. The 3-year notice period shall lapse
 33 as to any private company being displaced when the company
 34 ceases to provide service within the displacement area. ~~Nothing~~
 35 ~~in this paragraph prohibits the local government and the company~~
 36 ~~from voluntarily negotiating a different notice period or amount~~
 37 ~~of compensation.~~

38 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2021

Meeting Date

SB 844

Bill Number (if applicable)

940972

Amendment Barcode (if applicable)

Topic PUBLIC RECORDS

Name MATT DUNAGAN

Job Title DEPUTY EXECUTIVE DIRECTOR

Address 2617 MAHAN DR,

Street

TALLAHASSEE, FL 32308

City

State

Zip

Phone 850/877-2165

Email MDUNAGAN@FLSHERIFFS.ORG

Speaking: For Against Information

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

Representing FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

(AS AMENDED)

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

3/30/2021
Meeting Date

SB 844
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name MATT DUNAGAN

Job Title DEPUTY EXEC. DIRECTOR

Address 2617 MANHATTAN CENTER DR

Phone 850/877-2165

TALLAHASSEE, FL 32308
City State Zip

Email MDUNAGAN@FLSHERIFFS.ORG

Speaking: For Against Information

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

Representing FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 844

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Hooper

SUBJECT: Public Records

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 844 amends s. 28.222, F.S., establishing the clerk as the county recorder, to improve readability, and s. 28.2221, F.S., which governs electronic access to Official Records to provide access to otherwise exempt information to specified parties and for limited purposes.

The bill prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of a public records exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address. The bill expressly provides that home addresses¹ that are exempt from inspection or copying must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

Current law prohibits a county recorder from placing an image or copy of a public record, including an Official Record, on a publicly available website for general public display if that copy or image is of a (1) military discharge; (2) death certificate; or (3) a court file, record, or

¹ Section 119.071(4)(d), F.S., defines "home address" to mean the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.² The bill amends s. 28.2221, F.S., to include information made exempt from inspection or copying by the public within this prohibition.

Current law provides for notice to affected parties of the right to request removal of records prohibited from being placed by the county recorder on a publicly available website and specifies that no fee may be charged for such request. The bill provides that a request for removal of information by eligible individuals claiming an exemption under s. 119.071, F.S., must:

- Be written;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Contain confirmation of the individual's eligibility for exempt status.

The bill requires any information restricted from public display pursuant to a request for removal under s. 119.071, F.S., must be provided to the individual whose information was removed upon written request by sworn affidavit. The bill provides that a party making a false attestation in a written request for removal or for restricted information is subject to the penalty of perjury.

The bill authorizes access to exempt information under s. 119.071(4)(d), F.S., for the purpose of conducting a title search, to:

- An authorized title insurer and their affiliates;
- A title insurance agent, or title insurance agencies; or
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

The bill requires presentation of a photo identification and affirmation via sworn affidavit to the county recorder to access the otherwise exempt information. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

The bill provides that, upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of the affidavit requesting disclosure.

The bill specifies that the county recorder must record the affidavit in the official record but must not place the image or copy of the affidavit on a publicly available website for general public display. A party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

The bill provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm

² Section 28.2221(5)(a), F.S.

commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill amends s. 119.071, F.S., which contains several general exemptions to the Public Records Act. Current law provides that an agency that is the custodian of certain exempt information and is not the employer of the individual benefiting from the exemption must maintain the exempt status of that exemption only if the individual or employing agency submits a written request for maintenance of the exemption to the custodial agency. The bill requires this request to be notarized and that the individual state under oath the statutory basis for his or her exemption and confirm his or her status as a party eligible for exempt status.

The bill requires a county property appraiser or county tax collector to comply with a written request for maintenance of exemption by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. The bill provides that for written requests received prior to July 1, 2021, a county property appraiser or county tax collector must comply by October 1, 2021. The bill prohibits a county property appraiser or county tax collector from removing the street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 19.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.

The bill provides notice to individuals eligible for exempt status under s. 119.071(4)(d), F.S., that such information may be disclosed pursuant to s. 28.2221, F.S., to: (i) a title insurer and its affiliates; (ii) a title insurance agent or title .

Current law does not provide an expiration date for when the redacted or removed information is restored. The bill provides that the exempt status of a home address³ contained in the Official Records is maintained only during the period which the protected party resides at the dwelling location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in s. 119.071(4)(d), F.S., the protected party must submit a written request to release the removed information to the county recorder. The written request must comport with specified requirements. Additionally, upon the death of a protected party, any party can request the county recorder to release the removed information under certain circumstances.

The bill requires a county recorder to include on the daily schedule of deeds and conveyances, which is provided to county property appraisers, notification of any information therein that is subject to a request for removal on file with the county recorder.

The bill also removes obsolete language.

³ Section 119.071(4)(d)1.a., F.S., defines "home address" to mean "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Clerks of court may incur additional costs as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information.

The bill takes effect July 1, 2021.

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.⁴ 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.⁵

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.⁶ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁷ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as 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.⁸

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁹ The Florida Supreme Court has interpreted the statutory definition of “public record” to include material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.¹⁰

⁴ FLA. CONST. art. I, s. 24(a).

⁵ *Id.*

⁶ 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)

⁷ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁸ 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.”

⁹ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

¹⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.¹¹ A violation of the Public Records Act may result in civil or criminal liability.¹²

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.¹³ 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.¹⁴

General exemptions from the public records requirements are contained in the Public Records Act.¹⁵ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁶

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁷ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.

General Exemptions from Inspection under the Public Records Act

Section 119.071, F.S., provides categories of public records that are exempt from inspection or copying and is entitled "General exemptions from inspection or copying of public records." It contains five subparts and exempts information related to:

- Agency Administration;¹⁸

¹¹ Section 119.07(1)(a), F.S.

¹² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ *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).

¹⁵ *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).

¹⁶ *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).

¹⁷ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁸ Section 119.071(1), F.S.; includes information related to (1) examinations administered by an agency for purposes of licensure, certification or employment; (2) certain specified information related to a competitive solicitation; (3) any financial statement of a prospective bidder in submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project; (4) certain attorney work product; (5) videotape or video signals involving a federally licensed radio television station; (6) certain data processing software; and (7) specified United States Census Bureau address and map information.

- Agency Investigations;¹⁹
- Security and Firesafety;²⁰
- Agency Personnel Information;²¹ and
- Other Personal Information.²²

Section 119.071, F.S., provides for disclosure of certain exempt information under specified circumstances. The individuals covered by the exemptions found in s. 119.071, F.S., are eligible for redaction of their personal identifying information from public records. Many agencies make requests for removal or redaction on behalf of their current employees.

Public Records Exemption for Agency Personnel Information

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;²³
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²⁴
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²⁵
- Current or former certified firefighters;²⁶
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;²⁷
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;²⁸
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;²⁹
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;³⁰

¹⁹ Section 119.071(2), F.S.

²⁰ Section 119.071(3), F.S.

²¹ Section 119.071(4), F.S.

²² Section 119.071(5), F.S.

²³ Section 119.071(4)(d)2.a., F.S.

²⁴ Section 119.071(4)(d)2.b., F.S.

²⁵ Section 119.071(4)(d)2.c., F.S.

²⁶ Section 119.071(4)(d)2.d., F.S.

²⁷ Section 119.071(4)(d)2.e., F.S.

²⁸ Section 119.071(4)(d)2.f., F.S.

²⁹ Section 119.071(4)(d)2.g., F.S.

³⁰ Section 119.071(4)(d)2.h., F.S.

- Current or former code enforcement officers;³¹
- Current or former guardians ad litem;³²
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;³³
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³⁴
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³⁵
- County tax collectors;³⁶
- Certain current or former personnel of the Department of Health;³⁷
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;³⁸
- Current or former certified emergency medical technicians and paramedics;³⁹
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;⁴⁰
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴¹ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁴²

The employing agency as well as the employee is authorized assert the maintenance of the exempt status by submitting a written request for maintenance of the exemption (Request for Maintenance of an Exemption) to each agency which holds the employee's information.⁴³ Further, all of these exemptions have retroactive application.⁴⁴

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the

³¹ Section 119.071(4)(d)2.i., F.S.

³² Section 119.071(4)(d)2.j., F.S.

³³ Section 119.071(4)(d)2.k., F.S.

³⁴ Section 119.071(4)(d)2.l., F.S.

³⁵ Section 119.071(4)(d)2.m., F.S.

³⁶ Section 119.071(4)(d)2.n., F.S.

³⁷ Section 119.071(4)(d)2.o., F.S.

³⁸ Section 119.071(4)(d)2.p., F.S.

³⁹ Section 119.071(4)(d)2.q., F.S.

⁴⁰ Section 119.071(4)(d)2.r., F.S.

⁴¹ Section 119.071(4)(d)2.s., F.S.

⁴² Section 119.071(4)(d)2.t., F.S.

⁴³ Section 119.071(4)(d)3., F.S.

⁴⁴ Section 119.071(4)(d)4., F.S.

home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

In 2019, the Legislature defined term “home address” in s. 119.071(4), F.S., for the first time.⁴⁵ “Home address” is defined to mean:

the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Thus, the rights of individuals specified under s. 119.071(4)(d), F.S., and their spouses and their children, to request redaction of specified information is applicable to property records throughout their entire lives with no requirement for renewal.⁴⁶ This change allows qualifying individuals to redact all property descriptions from a public record, which may limit the ability to determine ownership of or encumbrances on a property.⁴⁷

Redacting this information may limit the effectiveness of the public record to give notice of property ownership to interested parties, which may:

- Create potential issues related to constructive notice and chain of title;
- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems accurately surveying property; and
- Delay real property transactions.⁴⁸

Civil and Criminal Penalties Under The Public Records Act

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to one year and a fine of up to \$1000.⁴⁹ Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to five years and a fine of up to \$5,000.⁵⁰

Reasonable attorney’s fees will be assessed against an agency found to have violated public records law.⁵¹

⁴⁵ Chapter 2019-12, L.O.F.

⁴⁶ See OPPAGA Report at 2.

⁴⁷ Florida Office of Program Policy Analysis & Government Accountability, *A Review of Home Address Redaction Processes and Real Property Interests*, (hereinafter the “OPPAGA Report”), Report 20-06, December 2020, available at <https://oppaga.fl.gov/Documents/Reports/20-06.pdf> (last visited February 11, 2021).

⁴⁸ The OPPAGA Report at 10.

⁴⁹ Section 119.10(2)(a), F.S.

⁵⁰ Section 119.10(2)(b), F.S.

⁵¹ Section 286.011(4), F.S.

Clerks of the Courts

Clerks of the circuit courts (Clerks) are constitutionally elected officers.⁵² A Clerk is considered to be the county recorder.⁵³ As county recorder, the Clerk must record all instruments in one general series called “official records.”⁵⁴ Official records consist of each instrument that the Clerk is required or authorized to record.

The Clerk is responsible for:

- Keeping and maintaining all court documents and electronic filings in the Clerk’s office;⁵⁵
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;⁵⁶
- Maintaining a progress docket on which the filing of each pleading or motion is noted;⁵⁷
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;⁵⁸
- Implementing an electronic filing process;⁵⁹ and
- Keeping and furnishing to respective county property appraisers a daily schedule of the deeds and conveyances filed for recordation (the schedule should set forth the name of the grantor, the names and addresses of each grantee and a description of the land as specified in each instrument so filed).⁶⁰

Official Records as Public Records

All instruments recorded in the Official Records must always be available to the public for inspection under the supervision of the Clerk.⁶¹ The term “public records” includes each official record.⁶² The purpose of recording a document is to put the public on notice about a particular matter. Clerks record numerous types of documents that are eligible for redaction or removal pursuant to s. 119.071, F.S.

Section 119.0714(3), F.S., provides that a person who prepares or files a record for recording in the Official Records may not include in that record a social security number or a bank account, debit, charge, or credit card number (Card Number) “unless otherwise expressly required by law.” If the social security number or Card Number is in electronic format, the county recorder must use his or her best effort to keep the social security numbers confidential and exempt pursuant to s. 119.071(5)(a), F.S., and to keep the complete Card Numbers exempt pursuant to s. 119.071(5)(b), F.S., without any person having to request redaction.⁶³ A holder of a social

⁵² See, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.

⁵³ Section 28.222(1), F.S.

⁵⁴ Section 28.222(2), F.S.

⁵⁵ Section 28.13, F.S.

⁵⁶ *Id.*

⁵⁷ Section 28.211, F.S.

⁵⁸ Section 28.222(2), F.S.

⁵⁹ Section 28.22205, F.S.

⁶⁰ Section 695.22, F.S.

⁶¹ Section 28.222(7), F.S.

⁶² Section 28.001(2), F.S.

⁶³ Section 119.0714(3)(a)1., F.S.

security number or a Card Number, or the attorney or legal guardian may request that a county record redact his social security number or Card Number that is part of an Official Record and made publicly available.⁶⁴ A request for redaction must be:

- Signed;
- Legibly written;
- Delivered by mail, facsimile, electronic transmission, or in person to the county recorder; and
- Specify the identification page number of the record that contains the number to be redacted.⁶⁵

The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

Since October 1, 2002, any person has a right to request a county recorder to remove from a publicly available website, any social security number contained in an Official Record. Such request must be:

- Made in writing;
- Delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder; and
- Specify the identification page number that contains the social security number to be redacted.⁶⁶

A fee may not be charged for the redaction of a social security number pursuant to such a request.

Section 119.0714(3)(e), F.S., specifies that the county recorder is not liable for the inadvertent release of social security numbers, or Card Numbers, filed with the county recorder.

A Request for Maintenance of an Exemption made pursuant to s. 119.071(4)(d) 3., F.S., must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

⁶⁴ Section 119.0714(3)(b), F.S.

⁶⁵ Section 119.0714(3)(b)1., F.S.

⁶⁶ Section 119.0714(3)(c)2., F.S.

**Clerk Records That May Have Personal Identifying Information
Eligible for Redaction⁶⁷**

Type of Official Record		
<ul style="list-style-type: none"> • Affidavit • Agreement • Assignment • Bond • Certificate • Certified Copy of Judgements • Condominium • Death Certificate • Deed • Easement • Financing Statement 	<ul style="list-style-type: none"> • Government Related • Judgment • Lien • Lis Pendens • Maps • Marriage Record • Mortgage • Military Discharge • Notices • Order 	<ul style="list-style-type: none"> • Plat Related • Plats • Powers of Attorney • Probate Documents • Releases • Restitution Orders • Restrictions • Satisfaction • Termination • Transfers of Security

In December 2020, the Florida Office of Program Policy Analysis and Government Accountability (the OPPAGA Report) issued a report entitled *A Review of Home Address Redaction Processes and Real Property Interests*. The OPPAGA Report states that the Florida Association of Court Clerks & Comptrollers has identified best practices for redaction requests.⁶⁸ Each requestor, even those residing in the same home, are required to complete a request form:

- Identifying themselves;
- Stating what makes them eligible for redaction; and
- Enumerating the specific documents and identifying pieces of information to be redacted (specific instrument number, book, and page of the document).⁶⁹

If an eligible individual seeks additional redactions in the future, they must complete a new redaction request each time.⁷⁰ Most requestors self-attest that they meet the eligibility criteria for redaction.⁷¹ The OPPAGA Report states that several Clerks reported that they require individuals to show identification or have the request form notarized to attest to their identity, most Clerks interviewed by OPPAGA do not further verify eligibility.⁷² “When asked, staff from multiple Clerk’s offices stated that they do not have the authority or the ability to investigate or verify that the requestor meets the statutory criteria for redaction.”⁷³

Electronic Access To Official Records

Since January 1, 2002, under s. 28.2221, F.S., the county recorder or Clerk must provide a current index of documents in the Official Records on a publicly accessible website of instruments recorded on or after January 1, 1990, limited to grantor and grantee names, party

⁶⁷ OPPAGA Report at 6.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

names, date, book and page number, comments, and type of record.⁷⁴ Since January 1, 2006, the Clerk has also been required to provide electronic access to images of the indexed documents.

Florida law prohibits a county recorder or a Clerk from placing certain images or copies of public records, including an Official Record, on a publicly available Internet website.⁷⁵ Specifically, no county recorder or Clerk may place an image or copy of a public record, including an Official Record, on a publicly available Internet website if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

Section 28.2221(5)(c), F.S., provides for notice to affected parties of the right to request removal or redaction of any image or copy of a public record, including an Official Record, if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. This request must be in writing (via mail, facsimile, or electronic transmission or in person) to the county recorder or Clerk. The request must identify the document identification page number of the document to be removed. No fee is charged for the removal or redaction of a document pursuant to such request. An affected person may petition the circuit court for an order directing compliance with this subsection.⁷⁶

Court Records as Public Records

To implement article 1, section 24(a) of The Florida Constitution, the Florida Supreme Court adopted Florida Rule of Judicial Administration 2.051, which has since been renumbered to rule 2.420. Rule 2.420 governs public access to judicial branch records and provides that “[t]he public shall have access to all records of the judicial branch of government” except in limited circumstances.⁷⁷

County Property Appraisers and County Tax Collectors

A “county property appraiser” is defined to mean “the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied.”⁷⁸ A “county tax collector” is defined to mean “the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.”⁷⁹ The County Officers maintain records, such as property records, that contain information that is exempt under s. 119.071, F.S. For example, a county property appraiser’s website may have a property owner name and a legal description of the

⁷⁴ In 2000, the Legislature passed CS/CS/SB 1334, codified as s. 28.221, F.S.

⁷⁵ Section 28.2221(5)(a), F.S.

⁷⁶ Section 28.2221(5)(d), F.S.

⁷⁷ Fla. R. Jud. Admin. 2.420(a).

⁷⁸ Section 192.001(3), F.S.

⁷⁹ Section 192.001(4), F.S.

property.⁸⁰ A county property appraiser’s website can also include courtesy web-links to images of deeds found on Clerks’ internet-based index of official records.⁸¹

III. Effect of Proposed Changes:

Section 1 amends s. 28.222(7), F.S., to improve the readability and substitutes the word “copies” for “extracts” in referring to instruments recorded in the Official Records.

Section 2 amends s. 28.2221, F.S., to remove past implementation dates regarding notice and make clarifying changes. The section prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of an exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address as defined in s. 119.071(4)(d), F.S. Additionally, this section provides that home addresses, as defined in s. 119.071(4)(d), F.S., that are exempt from inspection or copying, must not be included within the index or otherwise displayed on the county recorder’s publicly available website on which images or copies of the county’s official records are placed.

Section 2 also prohibits a county recorder from placing information made exempt from inspection or copying under s. 119.071, F.S., on a publicly available website for general public display. The section specifies that a request to remove information made exempt from inspection or copying under s. 119.071, F.S., or records must identify the Official Records book and page number, instrument number; or Clerk’s file number of such document to be removed. Further, a request for removal from a person claiming a public records exemption under s. 119.071, F.S., must:

- Be made in writing;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Confirm the individual’s eligibility for exempt status.

A party making a false attestation is subject to the penalty of perjury under s. 837.012, F.S.

Section 2 also provides that any information restricted from public display pursuant to a request for removal must be provided to the individual whose information was removed, at any time. The written request for restricted information must be made by sworn affidavit consistent with s. 92.50, F.S., and must include the Official Records book and page number, instrument number, or clerk’s file number for any information or document to be released. A party making a false attestation is subject to the penalty of perjury.

This section permits access to information restricted from public display or copying pursuant to a request for removal made under s. 119.071(4)(d), F.S., for the purpose of conducting a title search⁸² to:

⁸⁰ OPPAGA Report at 6.

⁸¹ *Id.*

⁸² As defined in s. 627.7722(4), F.S.

- An authorized title insurer pursuant to s. 624.401, F.S., and its affiliates, as defined in s. 624.10, F.S.;
- A title insurance agent, or title insurance agency, as defined in s. 626.841, F.S.; or
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Section 2 also requires that a photo identification be presented and affirmation via sworn affidavit to the county recorder. The photo identification and affirmation via sworn affidavit may be delivered in person, by mail or electronic transmission to the county recorder. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

An affidavit submitted by a title insurer, title insurance agent or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney authorized under this section must include the affiant requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer, directly, or through his or her law firm.

The county recorder must record the affidavit in the official record but must not place the image or copy of the affidavit on a publicly available website for general public display. Upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of the affidavit requesting disclosure at the address listed on the document or on the request for removal. The county recorder must prepare a certificate of mailing to be affixed to the affidavit and must receive the statutory service charges as prescribed by s. 28.24 from the affiant requestor..

A party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

This section also provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in ss. 775.082, or 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, 775.084, F.S.

Section 3 amends s. 119.071(4)(d), F.S., to require that a request for maintenance of an exemption be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

Section 3 creates new subparagraph 4.a. to require a county property appraiser or county tax collector, as defined in s. 192.001, who receives a written request for maintenance of an exemption to comply by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received prior to July 1, 2021, a county property appraiser or tax

collector must comply with this section by October 1, 2021. A county property appraiser or county tax collector must not remove the street address, legal description, or other information identifying real property within the agency's records so long as the name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency. A new subparagraph 4.b. is created to provide that any information restricted from public display, inspection or copying must be provided to the individual whose information was removed.

This section also provides notice that information made exempt under s. 119.071(4)(d), F.S., may be disclosed pursuant to s. 28.2221, F.S., to: (i) a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.19; (ii) a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or (iii) an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Section 3 also provides that the exempt status of a home address within the Official Records is maintained only during the period which the protected party resides at the dwelling location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in s. 119.071(4)(d), F.S., the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, confirm the protected party's request for release is pursuant to a conveyance of his or her dwelling location, and specify the identification page number of the document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 3 also provides that upon the death of the protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release the protected removed information unless there is a related request on file with the county recorder for continued removal of the information or unless such removal is otherwise by statute or by court order. The written request must attach the certified copy of a death certificate or order and must be notarized, must confirm the request for release is due to the death of the protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 4 amends s. 695.22, F.S., to require the daily schedule of deeds and conveyances include notification of any information therein that is subject to a request for removal on file with the county recorder.

Section 5 provides that the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....

As drafted the bill does not contain a finding that the bill fulfills and important state interest nor does it apply to all persons similarly situated (records custodians).

Article VII, s. 18(d) of the State Constitution provides “laws having insignificant impact . . . are exempt from the requirements” of s. 18(a). The “insignificant” threshold, for the Fiscal Year 2021-2022, is forecast at approximately \$2.2 million.⁸³ The cumulative cost for counties and municipalities to comply with the provisions of the bill is unknown at this time. If the cumulative costs are less than \$2.2 million, the bill is exempt from the requirements in s. 18(a).

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.

⁸³ 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 March 10, 2021). Based on the Florida Demographic Estimating Conference’s Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

B. Private Sector Impact:

An individual or a business that is currently unauthorized to obtain exempt records under s. 119.071, F.S., will now have access such information to the extent they comply with the process provided in the bill.

C. Government Sector Impact:

Indeterminate. The bill may have an indeterminate negative fiscal impact for clerks of court as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information. County property appraisers and county tax collectors may see an indeterminate negative fiscal impact in complying with the request for maintenance of exemption provision in removing restricted information from general public display.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 28.222, 28.2221, 119.071 and 695.22 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs on March 30, 2021:**

The CS:

- Provides conducting a title search as the sole valid purpose for requesting redacted information.
- Provides that an affidavit requesting redacted information must specify the exact location of the document requested.
- Removes financial institutions as an eligible party to request redacted information.
- Provides that, upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of both the affidavit and released information.
- Provides that various records subject to public records exemptions can be released upon the death of the protected party under certain circumstances.

CS by Governmental Oversight and Accountability on March 3, 2021:

The CS:

- Limits the exempt status of a home address contained in the Official Records to the period during which the employee resides at the dwelling location. Upon conveyance of the dwelling location, the employee must submit to the county recorder a written request to release the removed information.
- Authorizes access of restricted information to specified entities⁸⁴ for defined purposes⁸⁵ upon presentation of identification and affidavit. Upon obtaining the address information, the affiant requestor must provide notice to the affected parties.
- Permits county recorders to enter into limited access license agreements with specified parties for defined purposes.
- Provides that an individual whose information was removed from public display to access his or her restricted information, at any time.
- Provides notice to employees covered by the exemption under s. 119.071(4)(d), F.S., that such exempt information may be disclosed to specified entities pursuant to s. 28.2221, F.S.
- Requires a county property appraiser and county tax collector to comply with a written request for maintenance of exemption.
- Prohibits a county property appraiser or county tax collector from removing a street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 119.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.
- Prohibits a county recorder from removing a grantor name, grantee name or party name from the index on the publicly available website unless the street address portion of a home address as defined in s. 119.071(4)(d), F.S., is included.
- Expressly provides that a home address as defined in s. 119.071(4)(d), F.S., must not be included within the index or otherwise displayed on the publicly available website.

B. Amendments:

None.

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

⁸⁴ An authorized title insurer as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.; A title insurance agent or title insurance agencies, as defined in s. 626.841, F.S.; An attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or A financial institution as defined in s. 655.005, F.S.

⁸⁵ For the purpose of conducting a title search, as defined by s. 627.7722(4), F.S., perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property.



940972

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
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The Committee on Community Affairs (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (7) of section 28.222, Florida
Statutes, is amended to read:

28.222 Clerk to be county recorder.—

(7) All instruments recorded in the Official Records are
~~shall always be~~ open to the public, under the supervision of the
clerk, for the purpose of inspection thereof and of making



940972

11 copies ~~extracts~~ therefrom; but the clerk is ~~shall~~ not ~~be~~
12 required to perform any service in connection with such
13 inspection or making of copies ~~extracts~~ without payment of
14 service charges as provided in s. 28.24.

15 Section 2. Subsection (2) and paragraphs (a) and (c) of
16 subsection (5) of section 28.2221, Florida Statutes, are
17 amended, and subsections (6) and (7) are added to that section,
18 to read:

19 28.2221 Electronic access to official records.—

20 (2) (a) ~~No later than January 1, 2002,~~ The county recorder
21 in each county must ~~shall~~ provide a current index of documents
22 recorded in the official records of the county for the period
23 beginning no later than January 1, 1990, on a publicly available
24 ~~Internet~~ website which must ~~shall~~ also contain a document
25 requisition point for obtaining images or copies of the
26 documents reflected in the index and which has the capability of
27 electronically providing the index data to a central statewide
28 search site. The index must ~~shall~~ be limited to grantor and
29 grantee names, party names, date, book and page number,
30 comments, and type of record.

31 (b) Unless otherwise required by the court, a county
32 recorder may not remove the grantor name, grantee name, or party
33 name from the index on the publicly available website on the
34 basis of an exemption as defined in s. 119.011 unless the name
35 of the grantor or grantee includes the street address portion of
36 the home address as defined in s. 119.071(4)(d). Home addresses,
37 as defined in s. 119.071(4)(d), which are exempt from inspection
38 or copying under s. 119.071 may not be included within the index
39 or otherwise displayed on the county recorder's publicly



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40 available website on which images or copies of the county's
41 official records are placed.

42 (5) (a) ~~A No~~ county recorder ~~or clerk of the court~~ may not
43 place on a publicly available website for general public display
44 information made exempt from inspection or copying under s.
45 119.071, or any an image or copy of a public record, including
46 an official record, ~~on a publicly available Internet website for~~
47 ~~general public display~~ if that image or copy is of a military
48 discharge; death certificate; or a court file, record, or paper
49 relating to matters or cases governed by the Florida Rules of
50 Family Law, the Florida Rules of Juvenile Procedure, or the
51 Florida Probate Rules.

52 (c) ~~No later than 30 days after June 5, 2002,~~ Notice of the
53 right of any affected party to request removal of information or
54 records pursuant to this subsection must ~~shall~~ be conspicuously
55 and clearly displayed by the county recorder ~~or clerk of the~~
56 ~~court~~ on the publicly available ~~Internet~~ website on which images
57 or copies of the county's public records are placed and in the
58 office of each county recorder ~~or clerk of the court~~. In
59 ~~addition, no later than 30 days after June 5, 2002,~~ the county
60 recorder ~~or the clerk of the court~~ must have published, ~~on two~~
61 ~~separate dates,~~ a notice of such right in a newspaper of general
62 circulation in the county where the county recorder's office is
63 ~~located as provided for in chapter 50.~~ Such notice must contain
64 appropriate instructions for making the removal request in
65 person, by mail, ~~by facsimile,~~ or by electronic transmission.
66 The notice must ~~shall~~ state, in substantially similar form, that
67 any person has a right to request that a county recorder ~~or~~
68 ~~clerk of the court~~ remove from a publicly available website



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69 information made exempt from inspection or copying under s.
70 119.071 or an image or copy of a public record, including an
71 official record, ~~from a publicly available Internet website~~ if
72 that image or copy is of a military discharge; death
73 certificate; or a court file, record, or paper relating to
74 matters or cases governed by the Florida Rules of Family Law,
75 the Florida Rules of Juvenile Procedure, or the Florida Probate
76 Rules. Such request must be made in writing and delivered in
77 person, by mail, ~~facsimile,~~ or by electronic transmission, ~~or in~~
78 ~~person~~ to the county recorder ~~or clerk of the court~~. The request
79 must identify the Official Records book and page number,
80 instrument number, or clerk's file number for any ~~document~~
81 ~~identification page number of the~~ information or document to be
82 removed. For requests for removal from a person claiming a
83 public records exemption pursuant to s. 119.071, the request
84 must be written, be notarized, and state under oath the
85 statutory basis for removal of the information, image, or copy
86 that is restricted from general public display, and confirm the
87 individual's eligibility for exempt status. A party making a
88 false attestation is subject to the penalty of perjury under s.
89 837.012. A ~~No~~ fee may not ~~will~~ be charged for the removal of a
90 document pursuant to such request.

91 (6) (a) Any information restricted from public display,
92 inspection, or copying under paragraph (5) (a) pursuant to a
93 request for removal made under s. 119.071 must be provided at
94 any time to the individual whose information was removed. The
95 written request for the restricted information must be by sworn
96 affidavit consistent with s. 92.50 and must include the Official
97 Records book and page number, instrument number, or clerk's file



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98 number for any information or document to be released. Any party
99 making a false attestation is subject to the penalty of perjury
100 under s. 837.012. A fee may not be charged for the production of
101 any document pursuant to such request.

102 (b)1. For the purpose of conducting a title search as
103 defined by s. 627.7711 and upon presentation of photo
104 identification and affirmation by sworn affidavit consistent
105 with s. 92.50 to the county recorder, information restricted
106 from public display, inspection, or copying under paragraph
107 (5) (a) pursuant to a request for removal made under s. 119.071
108 may be disclosed to:

109 a. A title insurer authorized pursuant to s. 624.401 and
110 its affiliates as defined in s. 624.10;

111 b. A title insurance agent or title insurance agency as
112 defined in s. 626.841(1) and (2), respectively; or

113 c. An attorney duly admitted to practice law in this state
114 and in good standing with The Florida Bar.

115 2. The photo identification and affirmation by sworn
116 affidavit may be delivered in person, by mail, or by electronic
117 transmission to the county recorder.

118 3. The affiant requestor must attest to his or her
119 authority and the authorized purpose to access exempt
120 information pursuant to this section for the property specified
121 within the sworn affidavit.

122 4. The affiant requestor must identify the Official Records
123 book and page number, instrument number, or clerk's file number
124 for each document requested within the sworn affidavit.

125 5. Affidavits submitted by a title insurer, title insurance
126 agent, or title insurance agency must include the Florida



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127 Company Code or the license number, as applicable, and an
128 attestation to the affiant requestor's authorization to transact
129 business in this state. Affidavits submitted by an attorney
130 authorized under this section must include the affiant
131 requestor's Florida Bar number and a statement that the affiant
132 requestor has an agency agreement with a title insurer directly
133 or through his or her law firm.

134 6. The county recorder must record such affidavit in the
135 official records but may not place the image or copy of the
136 affidavit on a publicly available website for general public
137 display.

138 7. Upon providing a document disclosing redacted
139 information to an affiant requestor under this section, the
140 county recorder must provide a copy of the affidavit requesting
141 disclosure of the redacted information to each affected party at
142 the address listed on the document or on the request for removal
143 made by the affected party under s. 119.071. The county recorder
144 must prepare a certificate of mailing to be affixed to the
145 affidavit and must receive the statutory service charges as
146 prescribed by s. 28.24 from the affiant requestor.

147 8. Any party making a false attestation under this section
148 is subject to the penalty of perjury under s. 837.012.

149 (7) A person who uses any official record in a manner not
150 authorized in this section commits a misdemeanor of the second
151 degree, punishable as provided in s. 775.082 or s. 775.083. A
152 person who unlawfully uses any official record with intent to
153 cause bodily harm or with intent to threaten to cause bodily
154 harm commits a felony of the third degree, punishable as
155 provided in s. 775.082, s. 775.083, or s. 775.084.



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156 Section 3. Paragraph (d) of subsection (4) of section
157 119.071, Florida Statutes, is amended to read:

158 119.071 General exemptions from inspection or copying of
159 public records.—

160 (4) AGENCY PERSONNEL INFORMATION.—

161 (d)1. For purposes of this paragraph, the term:

162 a. "Home addresses" means the dwelling location at which an
163 individual resides and includes the physical address, mailing
164 address, street address, parcel identification number, plot
165 identification number, legal property description, neighborhood
166 name and lot number, GPS coordinates, and any other descriptive
167 property information that may reveal the home address.

168 b. "Telephone numbers" includes home telephone numbers,
169 personal cellular telephone numbers, personal pager telephone
170 numbers, and telephone numbers associated with personal
171 communications devices.

172 2.a. The home addresses, telephone numbers, dates of birth,
173 and photographs of active or former sworn law enforcement
174 personnel or of active or former civilian personnel employed by
175 a law enforcement agency, including correctional and
176 correctional probation officers, personnel of the Department of
177 Children and Families whose duties include the investigation of
178 abuse, neglect, exploitation, fraud, theft, or other criminal
179 activities, personnel of the Department of Health whose duties
180 are to support the investigation of child abuse or neglect, and
181 personnel of the Department of Revenue or local governments
182 whose responsibilities include revenue collection and
183 enforcement or child support enforcement; the names, home
184 addresses, telephone numbers, photographs, dates of birth, and



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185 places of employment of the spouses and children of such
186 personnel; and the names and locations of schools and day care
187 facilities attended by the children of such personnel are exempt
188 from s. 119.07(1) and s. 24(a), Art. I of the State
189 Constitution.

190 b. The home addresses, telephone numbers, dates of birth,
191 and photographs of current or former nonsworn investigative
192 personnel of the Department of Financial Services whose duties
193 include the investigation of fraud, theft, workers' compensation
194 coverage requirements and compliance, other related criminal
195 activities, or state regulatory requirement violations; the
196 names, home addresses, telephone numbers, dates of birth, and
197 places of employment of the spouses and children of such
198 personnel; and the names and locations of schools and day care
199 facilities attended by the children of such personnel are exempt
200 from s. 119.07(1) and s. 24(a), Art. I of the State
201 Constitution.

202 c. The home addresses, telephone numbers, dates of birth,
203 and photographs of current or former nonsworn investigative
204 personnel of the Office of Financial Regulation's Bureau of
205 Financial Investigations whose duties include the investigation
206 of fraud, theft, other related criminal activities, or state
207 regulatory requirement violations; the names, home addresses,
208 telephone numbers, dates of birth, and places of employment of
209 the spouses and children of such personnel; and the names and
210 locations of schools and day care facilities attended by the
211 children of such personnel are exempt from s. 119.07(1) and s.
212 24(a), Art. I of the State Constitution.

213 d. The home addresses, telephone numbers, dates of birth,



214 and photographs of current or former firefighters certified in
215 compliance with s. 633.408; the names, home addresses, telephone
216 numbers, photographs, dates of birth, and places of employment
217 of the spouses and children of such firefighters; and the names
218 and locations of schools and day care facilities attended by the
219 children of such firefighters are exempt from s. 119.07(1) and
220 s. 24(a), Art. I of the State Constitution.

221 e. The home addresses, dates of birth, and telephone
222 numbers of current or former justices of the Supreme Court,
223 district court of appeal judges, circuit court judges, and
224 county court judges; the names, home addresses, telephone
225 numbers, dates of birth, and places of employment of the spouses
226 and children of current or former justices and judges; and the
227 names and locations of schools and day care facilities attended
228 by the children of current or former justices and judges are
229 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
230 Constitution.

231 f. The home addresses, telephone numbers, dates of birth,
232 and photographs of current or former state attorneys, assistant
233 state attorneys, statewide prosecutors, or assistant statewide
234 prosecutors; the names, home addresses, telephone numbers,
235 photographs, dates of birth, and places of employment of the
236 spouses and children of current or former state attorneys,
237 assistant state attorneys, statewide prosecutors, or assistant
238 statewide prosecutors; and the names and locations of schools
239 and day care facilities attended by the children of current or
240 former state attorneys, assistant state attorneys, statewide
241 prosecutors, or assistant statewide prosecutors are exempt from
242 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.



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243 g. The home addresses, dates of birth, and telephone
244 numbers of general magistrates, special magistrates, judges of
245 compensation claims, administrative law judges of the Division
246 of Administrative Hearings, and child support enforcement
247 hearing officers; the names, home addresses, telephone numbers,
248 dates of birth, and places of employment of the spouses and
249 children of general magistrates, special magistrates, judges of
250 compensation claims, administrative law judges of the Division
251 of Administrative Hearings, and child support enforcement
252 hearing officers; and the names and locations of schools and day
253 care facilities attended by the children of general magistrates,
254 special magistrates, judges of compensation claims,
255 administrative law judges of the Division of Administrative
256 Hearings, and child support enforcement hearing officers are
257 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
258 Constitution.

259 h. The home addresses, telephone numbers, dates of birth,
260 and photographs of current or former human resource, labor
261 relations, or employee relations directors, assistant directors,
262 managers, or assistant managers of any local government agency
263 or water management district whose duties include hiring and
264 firing employees, labor contract negotiation, administration, or
265 other personnel-related duties; the names, home addresses,
266 telephone numbers, dates of birth, and places of employment of
267 the spouses and children of such personnel; and the names and
268 locations of schools and day care facilities attended by the
269 children of such personnel are exempt from s. 119.07(1) and s.
270 24(a), Art. I of the State Constitution.

271 i. The home addresses, telephone numbers, dates of birth,



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272 and photographs of current or former code enforcement officers;
273 the names, home addresses, telephone numbers, dates of birth,
274 and places of employment of the spouses and children of such
275 personnel; and the names and locations of schools and day care
276 facilities attended by the children of such personnel are exempt
277 from s. 119.07(1) and s. 24(a), Art. I of the State
278 Constitution.

279 j. The home addresses, telephone numbers, places of
280 employment, dates of birth, and photographs of current or former
281 guardians ad litem, as defined in s. 39.820; the names, home
282 addresses, telephone numbers, dates of birth, and places of
283 employment of the spouses and children of such persons; and the
284 names and locations of schools and day care facilities attended
285 by the children of such persons are exempt from s. 119.07(1) and
286 s. 24(a), Art. I of the State Constitution.

287 k. The home addresses, telephone numbers, dates of birth,
288 and photographs of current or former juvenile probation
289 officers, juvenile probation supervisors, detention
290 superintendents, assistant detention superintendents, juvenile
291 justice detention officers I and II, juvenile justice detention
292 officer supervisors, juvenile justice residential officers,
293 juvenile justice residential officer supervisors I and II,
294 juvenile justice counselors, juvenile justice counselor
295 supervisors, human services counselor administrators, senior
296 human services counselor administrators, rehabilitation
297 therapists, and social services counselors of the Department of
298 Juvenile Justice; the names, home addresses, telephone numbers,
299 dates of birth, and places of employment of spouses and children
300 of such personnel; and the names and locations of schools and



301 day care facilities attended by the children of such personnel
302 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
303 Constitution.

304 l. The home addresses, telephone numbers, dates of birth,
305 and photographs of current or former public defenders, assistant
306 public defenders, criminal conflict and civil regional counsel,
307 and assistant criminal conflict and civil regional counsel; the
308 names, home addresses, telephone numbers, dates of birth, and
309 places of employment of the spouses and children of current or
310 former public defenders, assistant public defenders, criminal
311 conflict and civil regional counsel, and assistant criminal
312 conflict and civil regional counsel; and the names and locations
313 of schools and day care facilities attended by the children of
314 current or former public defenders, assistant public defenders,
315 criminal conflict and civil regional counsel, and assistant
316 criminal conflict and civil regional counsel are exempt from s.
317 119.07(1) and s. 24(a), Art. I of the State Constitution.

318 m. The home addresses, telephone numbers, dates of birth,
319 and photographs of current or former investigators or inspectors
320 of the Department of Business and Professional Regulation; the
321 names, home addresses, telephone numbers, dates of birth, and
322 places of employment of the spouses and children of such current
323 or former investigators and inspectors; and the names and
324 locations of schools and day care facilities attended by the
325 children of such current or former investigators and inspectors
326 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
327 Constitution.

328 n. The home addresses, telephone numbers, and dates of
329 birth of county tax collectors; the names, home addresses,



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330 telephone numbers, dates of birth, and places of employment of
331 the spouses and children of such tax collectors; and the names
332 and locations of schools and day care facilities attended by the
333 children of such tax collectors are exempt from s. 119.07(1) and
334 s. 24(a), Art. I of the State Constitution.

335 o. The home addresses, telephone numbers, dates of birth,
336 and photographs of current or former personnel of the Department
337 of Health whose duties include, or result in, the determination
338 or adjudication of eligibility for social security disability
339 benefits, the investigation or prosecution of complaints filed
340 against health care practitioners, or the inspection of health
341 care practitioners or health care facilities licensed by the
342 Department of Health; the names, home addresses, telephone
343 numbers, dates of birth, and places of employment of the spouses
344 and children of such personnel; and the names and locations of
345 schools and day care facilities attended by the children of such
346 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
347 the State Constitution.

348 p. The home addresses, telephone numbers, dates of birth,
349 and photographs of current or former impaired practitioner
350 consultants who are retained by an agency or current or former
351 employees of an impaired practitioner consultant whose duties
352 result in a determination of a person's skill and safety to
353 practice a licensed profession; the names, home addresses,
354 telephone numbers, dates of birth, and places of employment of
355 the spouses and children of such consultants or their employees;
356 and the names and locations of schools and day care facilities
357 attended by the children of such consultants or employees are
358 exempt from s. 119.07(1) and s. 24(a), Art. I of the State



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359 Constitution.

360 q. The home addresses, telephone numbers, dates of birth,
361 and photographs of current or former emergency medical
362 technicians or paramedics certified under chapter 401; the
363 names, home addresses, telephone numbers, dates of birth, and
364 places of employment of the spouses and children of such
365 emergency medical technicians or paramedics; and the names and
366 locations of schools and day care facilities attended by the
367 children of such emergency medical technicians or paramedics are
368 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
369 Constitution.

370 r. The home addresses, telephone numbers, dates of birth,
371 and photographs of current or former personnel employed in an
372 agency's office of inspector general or internal audit
373 department whose duties include auditing or investigating waste,
374 fraud, abuse, theft, exploitation, or other activities that
375 could lead to criminal prosecution or administrative discipline;
376 the names, home addresses, telephone numbers, dates of birth,
377 and places of employment of spouses and children of such
378 personnel; and the names and locations of schools and day care
379 facilities attended by the children of such personnel are exempt
380 from s. 119.07(1) and s. 24(a), Art. I of the State
381 Constitution.

382 s. The home addresses, telephone numbers, dates of birth,
383 and photographs of current or former directors, managers,
384 supervisors, nurses, and clinical employees of an addiction
385 treatment facility; the home addresses, telephone numbers,
386 photographs, dates of birth, and places of employment of the
387 spouses and children of such personnel; and the names and



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388 | locations of schools and day care facilities attended by the
389 | children of such personnel are exempt from s. 119.07(1) and s.
390 | 24(a), Art. I of the State Constitution. For purposes of this
391 | sub-subparagraph, the term "addiction treatment facility" means
392 | a county government, or agency thereof, that is licensed
393 | pursuant to s. 397.401 and provides substance abuse prevention,
394 | intervention, or clinical treatment, including any licensed
395 | service component described in s. 397.311(26).

396 | t. The home addresses, telephone numbers, dates of birth,
397 | and photographs of current or former directors, managers,
398 | supervisors, and clinical employees of a child advocacy center
399 | that meets the standards of s. 39.3035(1) and fulfills the
400 | screening requirement of s. 39.3035(2), and the members of a
401 | Child Protection Team as described in s. 39.303 whose duties
402 | include supporting the investigation of child abuse or sexual
403 | abuse, child abandonment, child neglect, and child exploitation
404 | or to provide services as part of a multidisciplinary case
405 | review team; the names, home addresses, telephone numbers,
406 | photographs, dates of birth, and places of employment of the
407 | spouses and children of such personnel and members; and the
408 | names and locations of schools and day care facilities attended
409 | by the children of such personnel and members are exempt from s.
410 | 119.07(1) and s. 24(a), Art. I of the State Constitution.

411 | 3. An agency that is the custodian of the information
412 | specified in subparagraph 2. and that is not the employer of the
413 | officer, employee, justice, judge, or other person specified in
414 | subparagraph 2. must ~~shall~~ maintain the exempt status of that
415 | information only if the officer, employee, justice, judge, other
416 | person, or employing agency of the designated employee submits a



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417 written and notarized request for maintenance of the exemption
418 to the custodial agency. The request must state under oath the
419 statutory basis for the individual's exemption request and
420 confirm the individual's status as a party eligible for exempt
421 status.

422 4.a. A county property appraiser as defined in s.
423 192.001(3) or a county tax collector as defined in s. 192.001(4)
424 who receives a written and notarized request for maintenance of
425 the exemption pursuant to subparagraph 3. must comply by
426 removing the name of the individual with exempt status and the
427 instrument number or Official Records book and page number
428 identifying the property with the exempt status from all
429 publicly available records maintained by the property appraiser
430 or tax collector. For written requests received on or before
431 July 1, 2021, a county property appraiser or county tax
432 collector must comply with this section by October 1, 2021. A
433 county property appraiser or county tax collector may not remove
434 the street address, legal description, or other information
435 identifying real property within the agency's records so long as
436 a name or personal information otherwise exempt from inspection
437 and copying pursuant to this section are not associated with the
438 property or otherwise displayed in the public records of the
439 agency.

440 b. Any information restricted from public display,
441 inspection, or copying under sub-subparagraph a. must be
442 provided to the individual whose information was removed.

443 5.4. An officer, an employee, a justice, a judge, or other
444 person specified in subparagraph 2. may submit a written request
445 for the release of his or her exempt information to the



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446 custodial agency. The written request must be notarized and must
447 specify the information to be released and the party ~~that is~~
448 authorized to receive the information. Upon receipt of the
449 written request, the custodial agency must ~~shall~~ release the
450 specified information to the party authorized to receive such
451 information.

452 6.5. The exemptions in this paragraph apply to information
453 held by an agency before, on, or after the effective date of the
454 exemption.

455 7.6. Information made exempt under this paragraph may be
456 disclosed pursuant to s. 28.2221 to a title insurer authorized
457 pursuant to s. 624.401 and its affiliates as defined in s.
458 624.10; a title insurance agent or title insurance agency as
459 defined in s. 626.841(1) or (2), respectively; or an attorney
460 duly admitted to practice law in this state and in good standing
461 with The Florida Bar.

462 8. The exempt status of a home address contained in the
463 Official Records is maintained only during the period when the
464 protected party resides at the dwelling location. Upon
465 conveyance of the real property after October 1, 2021, and when
466 such real property no longer constitutes the protected party's
467 home address as defined in subparagraph 1.a., the protected
468 party must submit a written request to release the removed
469 information to the county recorder. The written request to
470 release the removed information must be notarized, must confirm
471 that the protected party's request for release is pursuant to a
472 conveyance of his or her dwelling location, and must specify the
473 Official Records book and page, instrument number, or clerk's
474 file number for each document containing the information to be



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475 released.

476 9. Upon the death of the protected party as verified by a
477 certified copy of a death certificate or court order, any party
478 can request the county recorder to release the protected
479 decedent's removed information unless there is a related request
480 on file with the county recorder for continued removal of the
481 decedent's information or unless such removal is otherwise
482 prohibited by statute or by court order. The written request to
483 release the removed information upon the death of a protected
484 party must attach the certified copy of a death certificate or
485 court order and must be notarized, must confirm the request for
486 release is due to the death of the protected party, and must
487 specify the Official Records book and page number, instrument
488 number, or clerk's file number for each document containing the
489 information to be released. A fee may not be charged for the
490 release of any document pursuant to such request.

491 10. This paragraph is subject to the Open Government Sunset
492 Review Act in accordance with s. 119.15 and shall stand repealed
493 on October 2, 2024, unless reviewed and saved from repeal
494 through reenactment by the Legislature.

495 Section 4. Section 695.22, Florida Statutes, is amended to
496 read:

497 695.22 Daily schedule of deeds and conveyances filed for
498 record to be furnished property appraiser.—After October 1,
499 1945, the several county recorders must ~~clerks of the circuit~~
500 ~~courts shall~~ keep and furnish to the respective county property
501 appraisers in the counties where such instruments are recorded a
502 daily schedule of the aforesaid deeds and conveyances so filed
503 for recordation, in which schedule must ~~shall~~ be set forth the



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504 name of the grantor or grantors, the names and addresses of each
505 grantee, and a description of the land as specified in each
506 instrument so filed. The daily schedule must include
507 notification of any information therein which is subject to a
508 request for removal on file with the county recorder.

509 Section 5. This act shall take effect July 1, 2021.

510
511 ===== T I T L E A M E N D M E N T =====

512 And the title is amended as follows:

513 Delete everything before the enacting clause
514 and insert:

515 A bill to be entitled
516 An act relating to public records; amending s. 28.222,
517 F.S.; deleting obsolete language; amending s. 28.2221,
518 F.S.; deleting obsolete language; prohibiting a county
519 recorder from removing a grantor name, grantee name,
520 or party name from the index on the publicly available
521 website unless the information is subject to a
522 specified public records exemption; prohibiting a
523 county recorder from placing certain information on
524 the publicly available website; prescribing
525 requirements for a person claiming a public records
526 exemption to request removal of information from a
527 publicly available website, subject to penalty of
528 perjury; prescribing the release of restricted
529 information to the individual whose information was
530 removed, subject to penalty of perjury; authorizing
531 specified parties to access information recorded in
532 the Official Records of a county which is otherwise



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533 exempt pursuant to a specified public records
534 exemption, for a specific purpose, if specified
535 conditions are met; requiring a sworn affidavit,
536 subject to penalty of perjury; providing criminal
537 penalties for the unlawful use of any official record;
538 amending s. 119.071, F.S.; requiring that a request
539 for maintenance of an exemption be notarized and
540 confirm the individual's status; prescribing
541 procedures for the removal of exempt information for a
542 county property appraiser and county tax collector;
543 requiring the release of information restricted from
544 public display to the individual whose information was
545 removed; providing disclosure of exempt information
546 under specified circumstances to specified entities;
547 providing that the exempt status of a home address
548 contained in the Official Records is maintained only
549 during a certain period; requiring the employee to
550 submit a written request to release removed
551 information upon the conveyance of his or her dwelling
552 location; prescribing procedures to release certain
553 information for a decedent under specified conditions;
554 specifying that such release is not subject to a fee;
555 amending s. 695.22, F.S.; deleting obsolete language;
556 requiring the daily schedule of deeds and conveyances
557 to include notification of any information therein
558 which is subject to a request for removal; providing
559 an effective date.

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

585-02376-21

2021844c1

1 A bill to be entitled
2 An act relating to public records; amending s. 28.222,
3 F.S.; deleting obsolete language; amending s. 28.2221,
4 F.S.; deleting obsolete language; prohibiting a county
5 recorder from removing a grantor name, grantee name,
6 or party name from the index on the publicly available
7 website unless the information is subject to a
8 specified public records exemption; prescribing
9 requirements for a person claiming a public records
10 exemption to request removal of information from a
11 publicly available website; prescribing for the
12 release of restricted information to the individual
13 whose information was removed, subject to penalty of
14 perjury; authorizing specified parties to access
15 information recorded in the Official Records of a
16 county which is otherwise exempt pursuant to a
17 specified public records exemption, for a specific
18 purpose, if specified conditions are met; requiring a
19 sworn affidavit, subject to penalty of perjury;
20 authorizing the county recorder to enter into a
21 limited access license agreement to allow electronic
22 access to official records for specified parties and
23 limited purposes; providing criminal penalties for the
24 unlawful use of any official record; amending s.
25 119.071, F.S.; requiring that a request for
26 maintenance of an exemption be notarized and confirm
27 the individual's status; prescribing procedures for
28 the removal of exempt information for a county
29 property appraiser and county tax collector;

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30 authorizing the release of information restricted from
31 public display to the individual whose information was
32 removed; providing notice of disclosure of exempt
33 information under specified circumstances to specified
34 entities; providing that the exempt status of a home
35 address contained in the Official Records is
36 maintained only during a certain period; requiring the
37 employee to submit a written request to release
38 removed information upon the conveyance of his or her
39 dwelling location and is not subject to a fee;
40 amending s. 695.22, F.S.; deleting obsolete language;
41 requiring the daily schedule of deeds and conveyances
42 to include notification of any information therein
43 which is subject to a request for removal; providing
44 an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Subsection (7) of section 28.222, Florida
49 Statutes, is amended to read:

50 28.222 Clerk to be county recorder.—

51 (7) All instruments recorded in the Official Records are
52 ~~shall always be~~ open to the public, under the supervision of the
53 clerk, for the purpose of inspection thereof and of making
54 copies extracts therefrom; but the clerk is ~~shall not be~~
55 required to perform any service in connection with such
56 inspection or making of copies extracts without payment of
57 service charges as provided in s. 28.24.

58 Section 2. Subsection (2) and paragraphs (a) and (c) of

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59 subsection (5) of section 28.2221, Florida Statutes, are
60 amended, and subsections (6) and (7) are added to that section,
61 to read:

62 28.2221 Electronic access to official records.—

63 (2) (a) ~~No later than January 1, 2002,~~ The county recorder
64 in each county must shall provide a current index of documents
65 recorded in the official records of the county for the period
66 beginning no later than January 1, 1990, on a publicly available
67 ~~Internet~~ website which must shall also contain a document
68 requisition point for obtaining images or copies of the
69 documents reflected in the index and which has the capability of
70 electronically providing the index data to a central statewide
71 search site. The index must shall be limited to grantor and
72 grantee names, party names, date, book and page number,
73 comments, and type of record.

74 (b) Unless otherwise required by the court, a county
75 recorder may not remove the grantor name, grantee name, or party
76 name from the index on the publicly available website on the
77 basis of an exemption as defined in s. 119.011 unless the name
78 of the grantor or grantee includes the street address portion of
79 the home address as defined in s. 119.071(4)(d). Home addresses,
80 as defined in s. 119.071(4)(d), which are exempt from inspection
81 or copying under s. 119.071 may not be included within the index
82 or otherwise displayed on the county recorder's publicly
83 available website on which images or copies of the county's
84 official records are placed.

85 (5) (a) A ~~No~~ county recorder ~~or clerk of the court~~ may not
86 place on a publicly available website for general public display
87 information made exempt from inspection or copying under s.

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88 119.071, or any ~~an~~ image or copy of a public record, including
89 an official record, ~~on a publicly available Internet website for~~
90 general public display if that image or copy is of a military
91 discharge; death certificate; or a court file, record, or paper
92 relating to matters or cases governed by the Florida Rules of
93 Family Law, the Florida Rules of Juvenile Procedure, or the
94 Florida Probate Rules.

95 (c) ~~No later than 30 days after June 5, 2002,~~ Notice of the
96 right of any affected party to request removal of information or
97 records pursuant to this subsection must shall be conspicuously
98 and clearly displayed by the county recorder ~~or clerk of the~~
99 court on the publicly available ~~Internet~~ website on which images
100 or copies of the county's public records are placed and in the
101 office of each county recorder ~~or clerk of the court~~. In
102 addition, no later than 30 days after June 5, 2002, the county
103 recorder ~~or the clerk of the court~~ must have published, on two
104 separate dates, a notice of such right in a newspaper of general
105 circulation in the county where the county recorder's office is
106 located as provided for in chapter 50. Such notice must contain
107 appropriate instructions for making the removal request in
108 person, by mail, ~~by facsimile,~~ or by electronic transmission.
109 The notice must shall state, in substantially similar form, that
110 any person has a right to request that a county recorder ~~or~~
111 clerk of the court remove from a publicly available website
112 information made exempt from inspection or copying under s.
113 119.071 or an image or copy of a public record, including an
114 official record, ~~from a publicly available Internet website~~ if
115 that image or copy is of a military discharge; death
116 certificate; or a court file, record, or paper relating to

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117 matters or cases governed by the Florida Rules of Family Law,
 118 the Florida Rules of Juvenile Procedure, or the Florida Probate
 119 Rules. Such request must be made in writing and delivered in
 120 person, by mail, ~~facsimile~~, or by electronic transmission, or in
 121 ~~person~~ to the county recorder ~~or clerk of the court~~. The request
 122 must identify the Official Records book and page number,
 123 instrument number, or clerk's file number for any document
 124 ~~identification page number of the information or document to be~~
 125 removed. For requests for removal from a person claiming a
 126 public records exemption pursuant to s. 119.071, the request
 127 must be written, be notarized, and state under oath the
 128 statutory basis for removal of the information, image, or copy
 129 that is restricted from general public display, and confirm the
 130 individual's eligibility for exempt status. A party making a
 131 false attestation is subject to the penalty of perjury under s.
 132 837.012. A ~~no~~ fee may not will be charged for the removal of a
 133 document pursuant to such request.

134 (6) (a) Any information restricted from public display, or
 135 inspection, or copying under paragraph (5) (a) pursuant to a
 136 request for removal made under s. 119.071 must be provided to
 137 the individual whose information was removed, at any time. The
 138 written request for the restricted information must be
 139 notarized, state under oath the statutory basis for the
 140 individual's claimed exemption, and confirm the individual's
 141 status as a party eligible for exempt status. A party making a
 142 false attestation is subject to the penalty of perjury under s.
 143 837.012. A fee may not be charged for the production of any
 144 document pursuant to such request.

145 (b)1. For the purpose of conducting a title search, as

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146 defined by s. 627.7711, perfecting or enforcing a lien or other
 147 interest in real or personal property, or purchasing, leasing,
 148 or lending involving real or personal property, and upon
 149 presentation of photo identification and affirmation by sworn
 150 affidavit to the county recorder, information restricted from
 151 public display, inspection, or copying under paragraph (5) (a)
 152 pursuant to a request for removal made under s. 119.071(4) (d)
 153 may be disclosed to:

154 a. An authorized title insurer as defined in s. 624.09, and
 155 their affiliates, as defined in s. 624.10;

156 b. A title insurance agent or title insurance agencies, as
 157 defined in s. 626.841;

158 c. An attorney duly admitted to practice law in this state
 159 and in good standing with The Florida Bar; or

160 d. A financial institution as defined in s. 655.005(1) (i).

161 2. The photo identification and affirmation by sworn
 162 affidavit may be delivered in person, by mail, or by electronic
 163 transmission to the county recorder.

164 3. The affiant requestor must attest to his or her
 165 authority and the authorized purpose to access exempt
 166 information pursuant to this section for the property specified
 167 within the sworn affidavit.

168 4. Affidavits submitted by a financial institution, title
 169 insurer, title insurance agent, or title insurance agency must
 170 include the Florida Company Code or the license number, as
 171 applicable, and an attestation to the affiant requestor's
 172 authorization to transact business in this state. Affidavits
 173 submitted by an attorney authorized under this section must
 174 include the affiant requestor's Florida Bar number and a

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175 statement that the affiant requestor has an agency agreement
 176 with a title insurer directly, or through his or her law firm.

177 5. The county recorder must record such affidavit in the
 178 official records but may not place the image or copy of the
 179 affidavit on a publicly available website for general public
 180 display.

181 6. The affiant requestor, upon receipt of a property
 182 address from the county recorder under this section, must
 183 provide a copy of the previously submitted affidavit to each
 184 affected party at the disclosed address.

185 7. A party making a false attestation under this section is
 186 subject to the penalty of perjury under s. 837.012.

187 (c) The county recorder may enter into a limited access
 188 license agreement granting access through electronic means, not
 189 subject to general public display, to information restricted
 190 from public display, inspection, or copying under paragraph
 191 (5) (a) pursuant to a request for removal made under s.
 192 119.071(4) (d) to the entities and for the purposes as specified
 193 in subparagraph (b)1.

194 (7) A person who uses any official record in a manner not
 195 authorized in this section commits a misdemeanor of the second
 196 degree, punishable as provided in s. 775.082 or s. 775.083. A
 197 person who unlawfully uses any official record with intent to
 198 cause bodily harm or with intent to threaten to cause bodily
 199 harm commits a felony of the third degree, punishable as
 200 provided in s. 775.082, s. 775.083, or s. 775.084.

201 Section 3. Paragraph (d) of subsection (4) of section
 202 119.071, Florida Statutes, is amended to read:

203 119.071 General exemptions from inspection or copying of

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204 public records.—

205 (4) AGENCY PERSONNEL INFORMATION.—

206 (d)1. For purposes of this paragraph, the term:

207 a. "Home addresses" means the dwelling location at which an
 208 individual resides and includes the physical address, mailing
 209 address, street address, parcel identification number, plot
 210 identification number, legal property description, neighborhood
 211 name and lot number, GPS coordinates, and any other descriptive
 212 property information that may reveal the home address.

213 b. "Telephone numbers" includes home telephone numbers,
 214 personal cellular telephone numbers, personal pager telephone
 215 numbers, and telephone numbers associated with personal
 216 communications devices.

217 2.a. The home addresses, telephone numbers, dates of birth,
 218 and photographs of active or former sworn law enforcement
 219 personnel or of active or former civilian personnel employed by
 220 a law enforcement agency, including correctional and
 221 correctional probation officers, personnel of the Department of
 222 Children and Families whose duties include the investigation of
 223 abuse, neglect, exploitation, fraud, theft, or other criminal
 224 activities, personnel of the Department of Health whose duties
 225 are to support the investigation of child abuse or neglect, and
 226 personnel of the Department of Revenue or local governments
 227 whose responsibilities include revenue collection and
 228 enforcement or child support enforcement; the names, home
 229 addresses, telephone numbers, photographs, dates of birth, and
 230 places of employment of the spouses and children of such
 231 personnel; and the names and locations of schools and day care
 232 facilities attended by the children of such personnel are exempt

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233 from s. 119.07(1) and s. 24(a), Art. I of the State
234 Constitution.

235 b. The home addresses, telephone numbers, dates of birth,
236 and photographs of current or former nonsworn investigative
237 personnel of the Department of Financial Services whose duties
238 include the investigation of fraud, theft, workers' compensation
239 coverage requirements and compliance, other related criminal
240 activities, or state regulatory requirement violations; the
241 names, home addresses, telephone numbers, dates of birth, and
242 places of employment of the spouses and children of such
243 personnel; and the names and locations of schools and day care
244 facilities attended by the children of such personnel are exempt
245 from s. 119.07(1) and s. 24(a), Art. I of the State
246 Constitution.

247 c. The home addresses, telephone numbers, dates of birth,
248 and photographs of current or former nonsworn investigative
249 personnel of the Office of Financial Regulation's Bureau of
250 Financial Investigations whose duties include the investigation
251 of fraud, theft, other related criminal activities, or state
252 regulatory requirement violations; the names, home addresses,
253 telephone numbers, dates of birth, and places of employment of
254 the spouses and children of such personnel; and the names and
255 locations of schools and day care facilities attended by the
256 children of such personnel are exempt from s. 119.07(1) and s.
257 24(a), Art. I of the State Constitution.

258 d. The home addresses, telephone numbers, dates of birth,
259 and photographs of current or former firefighters certified in
260 compliance with s. 633.408; the names, home addresses, telephone
261 numbers, photographs, dates of birth, and places of employment

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262 of the spouses and children of such firefighters; and the names
263 and locations of schools and day care facilities attended by the
264 children of such firefighters are exempt from s. 119.07(1) and
265 s. 24(a), Art. I of the State Constitution.

266 e. The home addresses, dates of birth, and telephone
267 numbers of current or former justices of the Supreme Court,
268 district court of appeal judges, circuit court judges, and
269 county court judges; the names, home addresses, telephone
270 numbers, dates of birth, and places of employment of the spouses
271 and children of current or former justices and judges; and the
272 names and locations of schools and day care facilities attended
273 by the children of current or former justices and judges are
274 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
275 Constitution.

276 f. The home addresses, telephone numbers, dates of birth,
277 and photographs of current or former state attorneys, assistant
278 state attorneys, statewide prosecutors, or assistant statewide
279 prosecutors; the names, home addresses, telephone numbers,
280 photographs, dates of birth, and places of employment of the
281 spouses and children of current or former state attorneys,
282 assistant state attorneys, statewide prosecutors, or assistant
283 statewide prosecutors; and the names and locations of schools
284 and day care facilities attended by the children of current or
285 former state attorneys, assistant state attorneys, statewide
286 prosecutors, or assistant statewide prosecutors are exempt from
287 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

288 g. The home addresses, dates of birth, and telephone
289 numbers of general magistrates, special magistrates, judges of
290 compensation claims, administrative law judges of the Division

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291 of Administrative Hearings, and child support enforcement
 292 hearing officers; the names, home addresses, telephone numbers,
 293 dates of birth, and places of employment of the spouses and
 294 children of general magistrates, special magistrates, judges of
 295 compensation claims, administrative law judges of the Division
 296 of Administrative Hearings, and child support enforcement
 297 hearing officers; and the names and locations of schools and day
 298 care facilities attended by the children of general magistrates,
 299 special magistrates, judges of compensation claims,
 300 administrative law judges of the Division of Administrative
 301 Hearings, and child support enforcement hearing officers are
 302 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 303 Constitution.

304 h. The home addresses, telephone numbers, dates of birth,
 305 and photographs of current or former human resource, labor
 306 relations, or employee relations directors, assistant directors,
 307 managers, or assistant managers of any local government agency
 308 or water management district whose duties include hiring and
 309 firing employees, labor contract negotiation, administration, or
 310 other personnel-related duties; the names, home addresses,
 311 telephone numbers, dates of birth, and places of employment of
 312 the spouses and children of such personnel; and the names and
 313 locations of schools and day care facilities attended by the
 314 children of such personnel are exempt from s. 119.07(1) and s.
 315 24(a), Art. I of the State Constitution.

316 i. The home addresses, telephone numbers, dates of birth,
 317 and photographs of current or former code enforcement officers;
 318 the names, home addresses, telephone numbers, dates of birth,
 319 and places of employment of the spouses and children of such

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320 personnel; and the names and locations of schools and day care
 321 facilities attended by the children of such personnel are exempt
 322 from s. 119.07(1) and s. 24(a), Art. I of the State
 323 Constitution.

324 j. The home addresses, telephone numbers, places of
 325 employment, dates of birth, and photographs of current or former
 326 guardians ad litem, as defined in s. 39.820; the names, home
 327 addresses, telephone numbers, dates of birth, and places of
 328 employment of the spouses and children of such persons; and the
 329 names and locations of schools and day care facilities attended
 330 by the children of such persons are exempt from s. 119.07(1) and
 331 s. 24(a), Art. I of the State Constitution.

332 k. The home addresses, telephone numbers, dates of birth,
 333 and photographs of current or former juvenile probation
 334 officers, juvenile probation supervisors, detention
 335 superintendents, assistant detention superintendents, juvenile
 336 justice detention officers I and II, juvenile justice detention
 337 officer supervisors, juvenile justice residential officers,
 338 juvenile justice residential officer supervisors I and II,
 339 juvenile justice counselors, juvenile justice counselor
 340 supervisors, human services counselor administrators, senior
 341 human services counselor administrators, rehabilitation
 342 therapists, and social services counselors of the Department of
 343 Juvenile Justice; the names, home addresses, telephone numbers,
 344 dates of birth, and places of employment of spouses and children
 345 of such personnel; and the names and locations of schools and
 346 day care facilities attended by the children of such personnel
 347 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 348 Constitution.

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349 1. The home addresses, telephone numbers, dates of birth,
 350 and photographs of current or former public defenders, assistant
 351 public defenders, criminal conflict and civil regional counsel,
 352 and assistant criminal conflict and civil regional counsel; the
 353 names, home addresses, telephone numbers, dates of birth, and
 354 places of employment of the spouses and children of current or
 355 former public defenders, assistant public defenders, criminal
 356 conflict and civil regional counsel, and assistant criminal
 357 conflict and civil regional counsel; and the names and locations
 358 of schools and day care facilities attended by the children of
 359 current or former public defenders, assistant public defenders,
 360 criminal conflict and civil regional counsel, and assistant
 361 criminal conflict and civil regional counsel are exempt from s.
 362 119.07(1) and s. 24(a), Art. I of the State Constitution.

363 m. The home addresses, telephone numbers, dates of birth,
 364 and photographs of current or former investigators or inspectors
 365 of the Department of Business and Professional Regulation; the
 366 names, home addresses, telephone numbers, dates of birth, and
 367 places of employment of the spouses and children of such current
 368 or former investigators and inspectors; and the names and
 369 locations of schools and day care facilities attended by the
 370 children of such current or former investigators and inspectors
 371 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 372 Constitution.

373 n. The home addresses, telephone numbers, and dates of
 374 birth of county tax collectors; the names, home addresses,
 375 telephone numbers, dates of birth, and places of employment of
 376 the spouses and children of such tax collectors; and the names
 377 and locations of schools and day care facilities attended by the

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378 children of such tax collectors are exempt from s. 119.07(1) and
 379 s. 24(a), Art. I of the State Constitution.

380 o. The home addresses, telephone numbers, dates of birth,
 381 and photographs of current or former personnel of the Department
 382 of Health whose duties include, or result in, the determination
 383 or adjudication of eligibility for social security disability
 384 benefits, the investigation or prosecution of complaints filed
 385 against health care practitioners, or the inspection of health
 386 care practitioners or health care facilities licensed by the
 387 Department of Health; the names, home addresses, telephone
 388 numbers, dates of birth, and places of employment of the spouses
 389 and children of such personnel; and the names and locations of
 390 schools and day care facilities attended by the children of such
 391 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 392 the State Constitution.

393 p. The home addresses, telephone numbers, dates of birth,
 394 and photographs of current or former impaired practitioner
 395 consultants who are retained by an agency or current or former
 396 employees of an impaired practitioner consultant whose duties
 397 result in a determination of a person's skill and safety to
 398 practice a licensed profession; the names, home addresses,
 399 telephone numbers, dates of birth, and places of employment of
 400 the spouses and children of such consultants or their employees;
 401 and the names and locations of schools and day care facilities
 402 attended by the children of such consultants or employees are
 403 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 404 Constitution.

405 q. The home addresses, telephone numbers, dates of birth,
 406 and photographs of current or former emergency medical

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407 technicians or paramedics certified under chapter 401; the
 408 names, home addresses, telephone numbers, dates of birth, and
 409 places of employment of the spouses and children of such
 410 emergency medical technicians or paramedics; and the names and
 411 locations of schools and day care facilities attended by the
 412 children of such emergency medical technicians or paramedics are
 413 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 414 Constitution.

415 r. The home addresses, telephone numbers, dates of birth,
 416 and photographs of current or former personnel employed in an
 417 agency's office of inspector general or internal audit
 418 department whose duties include auditing or investigating waste,
 419 fraud, abuse, theft, exploitation, or other activities that
 420 could lead to criminal prosecution or administrative discipline;
 421 the names, home addresses, telephone numbers, dates of birth,
 422 and places of employment of spouses and children of such
 423 personnel; and the names and locations of schools and day care
 424 facilities attended by the children of such personnel are exempt
 425 from s. 119.07(1) and s. 24(a), Art. I of the State
 426 Constitution.

427 s. The home addresses, telephone numbers, dates of birth,
 428 and photographs of current or former directors, managers,
 429 supervisors, nurses, and clinical employees of an addiction
 430 treatment facility; the home addresses, telephone numbers,
 431 photographs, dates of birth, and places of employment of the
 432 spouses and children of such personnel; and the names and
 433 locations of schools and day care facilities attended by the
 434 children of such personnel are exempt from s. 119.07(1) and s.
 435 24(a), Art. I of the State Constitution. For purposes of this

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436 sub-subparagraph, the term "addiction treatment facility" means
 437 a county government, or agency thereof, that is licensed
 438 pursuant to s. 397.401 and provides substance abuse prevention,
 439 intervention, or clinical treatment, including any licensed
 440 service component described in s. 397.311(26).

441 t. The home addresses, telephone numbers, dates of birth,
 442 and photographs of current or former directors, managers,
 443 supervisors, and clinical employees of a child advocacy center
 444 that meets the standards of s. 39.3035(1) and fulfills the
 445 screening requirement of s. 39.3035(2), and the members of a
 446 Child Protection Team as described in s. 39.303 whose duties
 447 include supporting the investigation of child abuse or sexual
 448 abuse, child abandonment, child neglect, and child exploitation
 449 or to provide services as part of a multidisciplinary case
 450 review team; the names, home addresses, telephone numbers,
 451 photographs, dates of birth, and places of employment of the
 452 spouses and children of such personnel and members; and the
 453 names and locations of schools and day care facilities attended
 454 by the children of such personnel and members are exempt from s.
 455 119.07(1) and s. 24(a), Art. I of the State Constitution.

456 3. An agency that is the custodian of the information
 457 specified in subparagraph 2. and that is not the employer of the
 458 officer, employee, justice, judge, or other person specified in
 459 subparagraph 2. must ~~shall~~ maintain the exempt status of that
 460 information only if the officer, employee, justice, judge, other
 461 person, or employing agency of the designated employee submits a
 462 written and notarized request for maintenance of the exemption
 463 to the custodial agency. The request must state under oath the
 464 statutory basis for the individual's exemption request and

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465 confirm the individual's status as a party eligible for exempt
466 status.

467 4.a. A county property appraiser as defined in s.
468 192.001(3) or a county tax collector as defined in s.
469 192.001(4), who receives a written and notarized request for
470 maintenance of the exemption pursuant to subparagraph 3., must
471 comply by removing the name of the individual with exempt status
472 and the instrument number or Official Records book and page
473 number identifying the property with the exempt status from all
474 publicly available records maintained by the property appraiser
475 or tax collector. For written requests received on or before
476 July 1, 2021, a county property appraiser or county tax
477 collector must comply with this section by October 1, 2021. A
478 county property appraiser or county tax collector may not remove
479 the street address, legal description, or other information
480 identifying real property within the agency's records so long as
481 a name or personal information otherwise exempt from inspection
482 and copying pursuant to this section are not associated with the
483 property or otherwise displayed in the public records of the
484 agency.

485 b. Any information restricted from public display,
486 inspection, or copying under sub-subparagraph a. must be
487 provided to the individual whose information was removed.

488 5.4- An officer, an employee, a justice, a judge, or other
489 person specified in subparagraph 2. may submit a written request
490 for the release of his or her exempt information to the
491 custodial agency. The written request must be notarized and must
492 specify the information to be released and the party ~~that is~~
493 authorized to receive the information. Upon receipt of the

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494 written request, the custodial agency ~~must shall~~ release the
495 specified information to the party authorized to receive such
496 information.

497 6.5- The exemptions in this paragraph apply to information
498 held by an agency before, on, or after the effective date of the
499 exemption.

500 7.6- Information made exempt under this paragraph may be
501 disclosed pursuant to s. 28.2221 to an authorized title insurer
502 as defined in s. 624.09, and their affiliates, as defined in s.
503 624.10; a title insurance agent or title insurance agencies, as
504 defined in s. 626.841; an attorney duly admitted to practice law
505 in this state and in good standing with The Florida Bar; or a
506 financial institution as defined in s. 655.005(1)(i).

507 8. The exempt status of a home address contained in the
508 Official Records is maintained only during the period when the
509 employee resides at the dwelling location. Upon conveyance of
510 the dwelling location, the employee must submit a written
511 request to release the removed information to the county
512 recorder. The written request to release the removed information
513 must be notarized, confirm the employee's request for release is
514 pursuant to a conveyance of his or her dwelling location, and
515 specify the identification page number of the document
516 containing the information to be released. A fee may not be
517 charged for the release of any document pursuant to such
518 request.

519 9. This paragraph is subject to the Open Government Sunset
520 Review Act in accordance with s. 119.15 and shall stand repealed
521 on October 2, 2024, unless reviewed and saved from repeal
522 through reenactment by the Legislature.

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523 Section 4. Section 695.22, Florida Statutes, is amended to
524 read:
525 695.22 Daily schedule of deeds and conveyances filed for
526 record to be furnished property appraiser.—After October 1,
527 1945, the several county recorders ~~clerks of the circuit courts~~
528 ~~must shall~~ keep and furnish to the respective county property
529 appraisers in the counties where such instruments are recorded a
530 daily schedule of the aforesaid deeds and conveyances so filed
531 for recordation, in which schedule must shall be set forth the
532 name of the grantor or grantors, the names and addresses of each
533 grantee, and a description of the land as specified in each
534 instrument so filed. The daily schedule must include
535 notification of any information therein which is subject to a
536 request for removal on file with the county recorder.
537 Section 5. This act shall take effect July 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/29/21

Meeting Date

1070

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 106 E. Colleg Ave. Suite 1200

Phone 850-999-4100

Street

Tallahasee

FL

32301

Email medenfield@deanmead.com

City

State

Zip

Speaking: For Against Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

SB 1070

Bill Number (if applicable)

Topic Estates and Trusts

Amendment Barcode (if applicable)

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1070

INTRODUCER: Community Affairs Committee; Judiciary Committee; and Senator Berman

SUBJECT: Estates and Trusts

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1070 amends laws on the transfer of property through wills, probate, and trusts.

The bill creates a comprehensive statutory framework for the creation and operation of a directed trust. Directed trusts are authorized by current law. In a directed trust, someone other than a trustee is allowed to direct some actions of a trustee of the trust.

The bill creates a comprehensive statutory framework for the creation and operation of a community property trust. Community property trusts are not addressed in current law. A community property trust holds property owned by a married couple as if the property was in a community property state, which has certain tax and estate planning advantages.

The bill amends probate law to provide that, absent specific intent in the divorce judgment, an ex-spouse is not a beneficiary of the former spouse's will, regardless of when the will was signed. Currently, an ex-spouse remains as a beneficiary after divorce if the will was signed prior to the wedding and the deceased failed to change the will after divorce.

The bill also requires a probate court to allow a surety bond in lieu of a depository account requirement; provides that the limitations periods for an action against a trust's trustee apply to directors, officers, and employees of the trustee; and applies homestead property law applicable to wills to homestead property held in a decedent's revocable trust.

Portions of the bill relating to the effect of divorce and depository accounts are effective upon becoming law. The remainder of the bill is effective July 1, 2021.

II. Present Situation:

Trusts, In General

Chapter 736, F.S., contains the Florida Trust Code (Code). The Code applies to express trusts, charitable or noncharitable, and to trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.

Under the Code, a settlor is the person who creates or contributes property to a trust.¹ A beneficiary of a trust is a person who has a present or future beneficial interest in the trust.² A trustee is the person who holds the legal title to the property of the trust. The trustee is granted certain powers and is subject to certain duties imposed by the terms of the trust, equity jurisprudence, or by statute. A trustee may have the power or duty to perform various acts of management.

A trustee derives his or her rules of conduct, extent and limit of authority, and measure of obligation from the trust instrument. Under the Code, a violation by a trustee of a duty owed to a beneficiary is a breach of trust. A breach of trust makes the trustee liable for any loss of the trust estate.

Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of beneficiaries. The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S., which provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.³

One area of trust law that cannot be changed by the terms of a trust is the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. This becomes troublesome where the settlor wants to appoint someone other than a trustee to direct some part of the operation of the trust.

Directed Trusts

In a directed trust, the terms of the trust grant a person other than a trustee a power over some aspect of the trust's administration. There is no consistent vocabulary to describe the person other than a trustee that holds a power in a directed trust. Several terms are common in practice, including "trust protector," "trust adviser," and "trust director." There is much uncertainty in existing law about the fiduciary status of a nontrustee that has a power over a trust and about the fiduciary duty of a trustee, sometimes called an "administrative trustee" or "directed trustee," with regard to actions taken or directed by the nontrustee.

¹ Section 736.0103(18), F.S.

² Section 736.0103(4), F.S.

³ Section 736.0105(2), F.S.

The concept of a directed trust is briefly addressed in current law at ss. 736.0703(9), and 736.0808, F.S. Those sections allow creation of a directed trust, provide for rights and duties between cotrustees, and provide that a trustee of a revocable trust may follow the direction of someone designated by the settlor unless that action would constitute a serious breach of trust. A person who holds a power to direct is considered a fiduciary.

Community Property Trust

The term “community property” refers to the legal theory, applicable in some states, that most property owned by a married person is jointly owned with the spouse. Nine states are considered “community property states.”⁴ Florida is not a community property state, but some residents come from community property states. Holding property as if community property law applies has certain advantages in divorce, tax avoidance, and estate planning. The Probate Code recognizes community property rights.⁵

Impact of Divorce on Wills and Trusts

One consequence of divorce is that is supposed to be the end of the benefits of marriage. One of the financial benefits of marriage is inheritance. Many persons who divorce neglect to change the terms of their wills, trusts, or other financial instruments, to omit their now former spouse as a beneficiary. This common omission, if not corrected by statute, can lead to unexpected windfalls for an ex-spouse years after divorce, to the detriment of the expected heirs of an estate (such as the current spouse, children, parents, and other family). Current law protects expected heirs from this oversight by creating the legal fiction that, for purposes of inheritance, revocable trusts, and certain beneficiary designations, a past divorce is treated in the distribution as if the surviving former spouse had died on the date of divorce.⁶ This legal fiction does not apply where the divorce judgment specifically requires that the former spouse remain as a beneficiary of the will, trust, or other financial instrument, or where the beneficiary designation is reaffirmed after divorce.

A 2018 appellate case exposed an exception in this area. In that case, the decedent had signed his will prior to the wedding date. The statute on wills requires that the will be signed during the term of the marriage for the ex-spouse to be disinherited by the statute. A strict reading of the statute led to the ex-wife receiving an inheritance, to the detriment of the decedent’s disabled father.⁷

Depository Accounts in Probate

Courts are commonly called on to assume control over a person’s property. The most common form of this is probate, but other common areas include guardianship and receivership. The trial

⁴ The nine states that have community-property systems: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Also, a community-property regime is elective in Alaska. Black’s Law Dictionary (11th ed. 2019).

⁵ Sections 732.216-.228, F.S., known as the Florida Uniform Disposition of Community Property Rights at Death Act.

⁶ Sections 732.507 (wills), 732.703 (certain life insurance, IRAs, retirement plans, and pay on death accounts), and 736.1105 (trusts), F.S.

⁷ *Gordon v. Fishman*, 253 So. 3d 1218 (Fla. 3d DCA 2018)

judge does not have the time or expertise to inventory, manage, and distribute such property, and so a fiduciary is appointed. These court-appointed fiduciaries are known by many names, including personal representative, guardian, curator, executor, administrator, trustee, or receiver. Current law provides numerous safeguards to guard against theft or mismanagement of property by a court-appointed fiduciary. A common safeguard is a requirement that a court-appointed fiduciary post a surety bond.

Surety bonds are expensive, and may not be available at any cost in large or complicated estates. Current law at s. 69.031, F.S., gives the court an alternative safeguard applicable to all court-appointed fiduciaries -- the use of a depository account. A depository account may be used where “the size of the bond . . . is burdensome or for other cause.” Where a depository account is used, the property of the estate is deposited with a bank, trust company, or savings and loan. Court approval is required for every distribution from a depository account, a burdensome and costly process.

Probate practitioners report that some jurisdictions require use of a depository account pursuant to a blanket policy. A blanket policy requiring use of a depository account is improper.⁸

Liability of Directors, Officers and Employees

Section 736.1008, F.S., creates limitation periods for a beneficiary’s claim against a trustee for a breach of trust. The trustee has the authority to adequately disclose matters in a trust disclosure document and include a limitations notice to use a 6-month statute of limitations. Where the appointed trustee is a business entity, employees of the trustee may be personally liable for a breach of trust.⁹ It is unclear whether the limitations period for filing a lawsuit against a trustee similarly applies to directors, officers, or employees of the trustee.

Homestead Property in a Trust

The state constitution protects a homestead in three distinct ways. First, it provides homesteads with an exemption from property taxes. Second, the homestead provision protects the homestead from forced sale by creditors. Third, the homestead provision delineates the restrictions a homestead owner faces when attempting to alienate or devise the homestead property.¹⁰ This bill involves the second and third protections.

When held by an individual, a homestead is protected from forced sale by creditors. Of course, this protection does not affect a tax or mortgage lien foreclosure. This protection extends to the heirs of such individual, so that the heirs inherit the homestead property without being subject to creditors of the deceased. It is unclear whether the same protection would apply to a specific devise of homestead property held in a trust. One court has ruled that it did not protect heirs receiving homestead property through a trust because the transfer from the individual to the trust

⁸ *Goodstein v. Goodstein*, 263 So. 3d 78 (Fla. 4th DCA 2019).

⁹ *Beaubien v. Cambridge Consol., Ltd.*, 652 So. 2d 936 (Fla. 5th DCA 1995).

¹⁰ *Snyder v. Davis*, 699 So. 2d 999, 1001–02 (Fla. 1997).

caused the property to lose its homestead status.¹¹ Two appellate courts have held to contrary, finding that homestead property retained its status after transfer to a trust.¹²

The third part of the homestead benefits and limitations trio is related to devise of the property. The term “devise” refers to transfer of property by will. The Probate Code specifically provides that transfer by a trust is the same as a transfer will for purposes of limiting the devise of homestead property. This does not, however, appear in the Trust Code.

Also not appearing in the Trust Code are laws regarding the mechanics of the transfer of title and possession. In probate, title vests in the beneficiary at the moment of death.

It is common in probate proceedings to obtain a court order determining that property owned by the deceased was homestead property on the date of death. Once homestead is determined, the parties can go about the business of paying creditors and distributing property to heirs. A court order determining homestead status is required by title insurance in some circumstances. However, where the property was held in a revocable trust, there is no apparent authority for a court to determine that the trust property was homestead.

III. Effect of Proposed Changes:

Directed Trusts

The bill creates a comprehensive statutory framework for the governance of directed trusts. The bill repeals the brief references to directed trusts in current law. Current law is not changed, just greatly expanded and clarified.

The bill creates Part XIV of the Trust Code, ch. 736, F.S., entitled “Directed Trusts.”

The bill creates s. 736.1403, F.S., to provide that Part XIV applies to a Florida-based trust, including one created before July 1, 2021, but only applies to a decision or action occurring on or after July 1, 2021. If a trust is moved to Florida on or after July 1, 2021, this part only applies to a decision or action taken after the move.

The bill creates s. 736.1405, F.S., to exclude certain persons or transactions from the part. Anyone who holds any power over a trust is subject to this part, so exceptions are required to limit its scope. A person who only holds any of the following powers is not subject to this part, unless specifically subject to this part under the terms of the trust:

- A power of appointment.
- A power to appoint or remove a trustee or trust director.
- Any power of the settlor over the trust while the trust is revocable.
- Any power of a beneficiary, but only to the extent such power only affects the beneficiary or benefits another beneficiary represented by the beneficiary.
- Any non-fiduciary power related to federal income tax planning.
- Any power to add or release a power benefitting the settlor for federal income tax purposes.

¹¹ *Elmowitz v. Estate of Zimmerman*, 647 So. 2d 1064 (Fla. 3rd DCA 1994).

¹² *HCA Gulf Coast Hosp. v. Estate of Downing*, 594 So. 2d 774 (Fla. 1st DCA 1991) (spendthrift trust); *Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 1st DCA 2006)(revocable trust).

For purposes of this section and as to a person other than a trustee of the trust:

- The power to designate a recipient of an ownership in the trust is a power of appointment.
- The power to terminate is a power of appointment.
- The power to create, modify, or terminate a power of appointment is a power of direction; unless it is a power to create a power of appointment that is an element of a broader power to affect an ownership interest in trust property beyond the mere creation of a power of appointment.

The bill creates s. 736.1406, F.S., to specify that the general power of a trust director is the power to do what the trust directs. In carrying out that responsibility, the trust director has the power to do anything appropriate to the exercise or non-exercise of such power of direction, subject to the limits of s. 736.1407, F.S. However, where there are two or more persons with the same power of direction, they must act by majority vote.

The bill creates s. 736.1407, F.S., to limit the powers of a trust director. A trust director must act as a trustee and comply with the requirements of a special needs trust under the federal Medicaid program,¹³ and with the requirements of a charitable interest in the trust.

The bill creates s. 736.1408, F.S., to provide that the duty of a trust director is the same as the duty of a trustee as to that specific power. The terms of the trust may vary the duty or liability of a trust director, with the same limits that the duty and liability of a trustee may be modified.¹⁴ A trust director who is licensed to practice health care and who furnishes health care services to a beneficiary is liable as provided in health care law and not liable under trust law. The terms of a trust may impose an additional duty or liability on a trust director.

The bill creates s. 736.1409, F.S., to provide the duties and liabilities of a directed trustee. In general, a directed trustee has the duty to reasonably comply with the direction of a trust director. However, a directed trustee is not required to comply with a direction that would constitute willful misconduct. A trustee is responsible for determining whether the trust director currently holds the power to direct the specific action or inaction. A direction to release a trustee or a trust director from liability is ineffective if the breach involved willful misconduct by a trustee or trust director, was induced by improper conduct, or the trust director did not know material facts. A directed trustee may apply to the court for instructions related to this section and the trust must pay the costs and fees. These are minimum requirements, the trust may impose additional duties and liabilities.

The bill creates s. 736.141, F.S., regarding duties to provide information. A trustee and a trust director each has a duty to one another to provide relevant information. Reasonable reliance on such information will not make one or the other liable for a breach of trust, absent willful misconduct. A trust director must provide information within the trust director's knowledge or control to a qualified beneficiary upon a written request of a qualified beneficiary, but only to the extent the information is reasonably related to the powers or duties of the trust director.

¹³ 42 U.S.C. s. 1396p(d)(4)(A).

¹⁴ Section 736.0105(2), F.S., lists 23 terms of a trust that are solely governed by the Trust Code and cannot be changed, waived, or otherwise altered by the terms of the trust.

The bill creates s. 736.1411, F.S., limiting duties. Unless provided differently in the trust, a trustee and a trust director have no duty to monitor each other, or to inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee or trust director might have acted differently than the other. Volunteering such information does not thereby create the duty.

The bill creates s. 736.1412, F.S., to allow for a co-trustee to act in the role as a trust director. In such case, the duties and liabilities are the same as those in the directed trustee and trust director roles. This new section is similar to current law at s. 736.0703(9), F.S., in effect.

The bill creates s. 736.1413, F.S., to provide that the limitations periods for an action against a trust director for breach of trust are the same as those applicable to a trustee. The bill creates s. 736.1414, F.S., to provide that a trust director has the same legal defenses as a trustee would in a like situation. The bill creates s. 736.1415, F.S., to provide that a trust director of a trust subject to this Part is subject to the jurisdiction of the state courts. The bill creates s. 736.1416, F.S., to provide that, except as provided in the terms of the trust, a trust director is treated as a trustee for 31 purposes.

If a person has not accepted a trust directorship, or if a trustee, settlor, or a qualified beneficiary of the trust is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified beneficiary of the trust may make a written demand on a person designated to serve as a trust director, with a written copy to the trustees, to accept or confirm prior acceptance of the trust directorship. The designated trust director must reply within 60 days after receipt.

The bill makes the following conforming changes to the Probate Code related to Directed Trusts:

Applicable to directed trusts, definitions for the Probate Code are amended by adding the following definitions:

- “Directed trust” means a trust which includes a power of direction.
- “Directed trustee” means a trustee subject to direction by a trust director.
- “Power of direction” means a power over a trust granted to a person by the trust terms that is exercisable by the person when not serving as a trustee.
- “Trust director” means a person who has a power of direction under the trust terms to the extent exercisable while that person is not a trustee.

The bill amends s. 736.0105, F.S., regarding requirements of the Trust Code that cannot be modified by the terms of a trust, to allow directed trusts. Specifically, a trustee’s duty of good faith and duty to follow the terms of trust may be modified by a directed trust to provide that:

- A directed trustee may comply with a direction from a trust director, as required by s. 736.1409, F.S. (created by this bill).
- A directed trustee has no duty to monitor or supervise a trust director, as provided by s. 736.1411, F.S. (created by this bill).
- Where a co-trustee is given a power of direction, and whenever that co-trustee is exercising a power of direction, that co-trustee is treated as if he or she were a trust director and the

excluded trustee (one that must comply with the power of direction) is treated as if he or she were a directed trustee.

Section 736.1008, F.S., regarding limitations on actions against a trustee, is amended to additionally apply to actions against a trust director, and to actions against a director, officer or employee of a trustee or trust director.

Section 736.1017, F.S., regarding a certification of trust, is amended to include requirements applicable to a directed trust. That section currently lists disclosures regarding the trust that a trust can furnish to a third party rather than giving a copy of the trust. The bill adds the following required disclosures:

- Whether the trust includes a power of direction.
- Identity of current trust directors.
- The trustee powers subject to a power of direction.
- Whether a power of direction related to the proposed transaction has been used in relation to the transaction.

Current statutes on directed trusts, at ss. 736.0703(9) and 736.0808, F.S., are repealed.

Current statutes at ss. 736.0802, 736.08125, and 738.104, F.S., are amended to update cross-references.

Community Property Trusts

The bill creates Part XV of the Trust Code, ch. 736, F.S., entitled “Community Property Trust Act.”

The bill creates s. 736.1502, F.S., to define terms applicable to the part:

- “Community property” means the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.
- “Community property trust” means an express trust that complies with s. 736.1503, F.S., and is created on or after July 1, 2021.
- “Decree” means a judgment or other order of a court of competent jurisdiction.
- “Dissolution” means either termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or entry of a decree of legal separation maintenance.
- “During marriage” means a period that begins at marriage and ends upon the dissolution of marriage or upon the death of a spouse.
- “Qualified trustee” means either a natural person who is a resident of the state; or a company authorized to act as a trustee in the state.
- “Settlor spouses” means a married couple who establishes a community property trust pursuant to this part.

The bill creates s. 736.1503, F.S., to set the requirements for creation of a community property trust. To create a community property trust, the trust must:

- Expressly say that it is a community property trust.
- Appoint a qualified trustee.
- Be signed by both spouses. Most community property trusts will have testamentary effect, in which case the trust documents must follow existing trust and homestead law applicable to similar trusts, i.e., must be signed with the same formalities as a will.
- Contain this notice:

THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY, THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND INDEPENDENT LEGAL ADVICE

The bill creates s. 736.1504, F.S., to set forth the terms of an agreement to create a community property trust. In the agreement, the spouses may:

- Determine rights and obligations regarding property in the trust.
- Describe management and control.
- Set forth the disposition of trust property upon dissolution, death, or other event.
- Declare whether the trust is revocable or irrevocable.
- Set any other lawful term of the trust which does not otherwise destroy the community property status of the property transferred to the trust.

A surviving spouse may amend the terms of a community property trust as to that spouse's half interest, even if the trust is otherwise irrevocable. During the lifetime of both, the spouses are the only qualified beneficiaries of the trust; and after the death of one, the surviving spouse is the only qualified beneficiary of his or her half. This applies whether the trust is revocable or irrevocable.

The bill creates s. 736.1505, F.S., creating miscellaneous provisions regarding a community property trust and property of the trust:

- The spouses may or may not be domiciled in the state.
- No consideration is required for creation of a community property trust.
- All property held by a community property trust is community property.
- Property distributed by a community property trust loses its characterization as community property unless a foreign law makes such property community property.

The bill creates s. 736.1506, F.S., to provide creditor rights in the assets of a community property trust. As to non-homestead property held by the trust, an obligation of one spouse may only be satisfied from that spouse's half, and an obligation of both may be satisfied from the trust.

The bill creates s. 736.1507, F.S., to provide for the death of spouse. Upon the death of a spouse:

- The surviving spouse's half of the trust is protected and is not counted as an asset of the decedent spouse's estate for purposes of the elective share.
- The decedent spouse's half of the trust is subject to probate unless it is protected as homestead property.
- The trustee has the discretion to determine which assets of the trust will be used for distribution to the heirs of the decedent spouse.

The bill creates s. 736.1508, F.S., to provide that a community property trust terminates upon dissolution of the marriage. Upon dissolution, trust assets are split evenly unless otherwise required by an agreement agreed to by both spouses. Section 61.075, F.S., which sets the default standards for distribution of assets in divorce, does not apply to assets held in a community property trust.

The bill creates s. 736.1509, F.S., to provide that the existence of a community property trust does not adversely affect the right of a child of the settlor spouses to support that either would be legally required to pay. This section does not address support owed to a child of one of the spouses, thus that situation would be governed by s. 736.1506, F.S. (as created by this bill), which would allow legal attachment against the parental spouse's half interest.

The bill creates s. 736.151, F.S., to specify that homestead property transferred to a community property trust retains its homestead character. All three forms of homestead apply (property tax exemption including Save Our Homes, protection from creditors, and limitation on devise).

The bill creates s. 736.1511, F.S., to set out the interpretation and treatment of a community property trust under federal tax law. The bill provides that property in a community property trust is considered community property under Florida law for purposes of establishing the taxable basis under 26 U.S.C. s. 1014(b)(6). That federal law provides for calculation of the taxable basis in community property of the decedent as of the time of his or her death. Additionally, community property transferred from another state retains its character as community property while in a Florida community property trust. Property in a community property trust that is revoked only retains its character as community property in Florida if it otherwise would as foreign property under current probate law.¹⁵

The bill creates s. 736.1512, F.S., to make certain community property trusts unenforceable. A community property trust is unenforceable if:

- The terms were unconscionable when made;
- The spouse against whom enforcement is sought did not enter into the agreement voluntary; or
- The spouse against whom enforcement is sought did not receive fair and reasonable financial disclosure, did not waive disclosure, and did not have notice of the other spouse's finances.

¹⁵ Current probate law as ss. 732.216 through 732.228, F.S., is the Florida Uniform Disposition of Community Property Rights at Death Act.

A community property trust is not unenforceable on the grounds that the spouses did not have separate counsel.

Impact of Divorce on Wills and Trusts

The bill amends the Probate Code at s. 732.507, F.S., to provide that a former spouse is considered, for estate purposes, to have died on the date of the divorce. The date the will was signed does not affect this legal fiction. The bill amends the Trust Code at s. 736.1105, F.S., to clarify the same result applies to a revocable trust. These changes apply to estates and trusts of decedents who die on or after the effective date of the bill, regardless of when the trust or will was signed. The effective date of the bill for purposes of the changes to these two sections is upon becoming law.

The similar statute on beneficiaries of certain other financial instruments is not modified by this bill as the same result is clear in the text.

Depository Accounts in Probate

The bill amends s. 69.031, F.S., to allow, in probate proceedings where the court has required a depository account, the personal representative of an estate, or other officer appointed to hold property of the estate, the option at any time to post a surety bond instead. The bond must be for value of the personal property, or other reasonable sum set by the probate court. The bill amends s. 744.3679, F.S., to conform. The change to depository accounts is effective upon becoming law.

Liability of Directors, Officers and Employees

The bill amends s. 736.1008, F.S., to provide that the limitations periods applicable to a trustee also apply to a claim against a director, officer, or employee of the trustee or trust director. Additionally, the limitations periods of that statute also apply to claims against a trust director and to a director, officer, or employee of a trust director.

Homestead Property in a Trust

The bill creates s. 736.1109, F.S., to create homestead protections in the Trust Code consistent with those applicable to the Probate Code and consistent with the state constitutional homestead protections. Accordingly, as to a revocable trust, or a trust with testamentary effect:

- Like in wills, if a trust tries to devise homestead in violation of the constitutional limits, the trust provision is void and the property is subject to the Probate Code statute regarding this violation of the homestead provision.¹⁶
- Like in wills, a general power of sale or general direction to pay debts in the trust instrument does not cause loss of the carry-over protection from forced sale by creditors.

¹⁶ Section 732.401, F.S. Under that section, upon violation of the homestead limitation on devise, the property goes to the surviving spouse if there are no descendants. If there are surviving descendants, the surviving spouse gets a life estate in homestead and the remainder is distributed to the descendants. In lieu of a life estate, the surviving spouse may elect a 50 percent share in the property.

- Unlike wills, where a trust directs sale of property that would otherwise be protected homestead, title to the property remains in the name of the trustee.
- These provisions are “intended to clarify existing law” and thus apply retroactively and in the future.

The bill also amends s. 736.0201, F.S., a part of the trust law, to provide that a probate court may determine the homestead status of real property held in a revocable trust at the time of death.

Other Changes

The bill amends s. 736.0603, F.S., to add that the trustee of a revocable trust may follow the direction of the settlor that is contrary to the terms of the trust. This is subject to the statutory requirements of formality should the direction involve real property or testamentary disposition,¹⁷ and the statutory requirement that a revocation be according to the terms of the trust.¹⁸ This addition appears to reflect current law.

Portions of the bill relating to the effect of divorce and depository accounts are effective upon becoming law. The remainder of the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

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.

¹⁷ Section 736.0403(2), F.S.

¹⁸ Section 736.0602(3)(a), F.S.

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: 69.031, 732.507, 736.0103, 736.0105, 736.0201, 736.0603, 736.0703, 736.1008, 736.1017, 736.1105, 736.0802, 736.08125, 738.104, and 744.3679.

This bill creates the following sections of the Florida Statutes: 736.1109, 736.1401, 736.1416, 736.1403, 736.1405, 736.1406, 736.1407, 736.1408, 736.1409, 736.141, 736.1411, 736.1412, 736.1413, 736.1414, 736.1415, 736.1501, 736.1502, 736.1503, 736.1504, 736.1505, 736.1506, 736.1507, 736.1508, 736.1509, 736.151, 736.1511, and 736.1512.

This bill repeals section 736.0808, 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 Community Affairs Committee on March 30, 2021:

The committee substitute clarifies that certain claims are barred against employees acting for the trust director.

CS by Judiciary Committee on March 22, 2021:

The portion of the bill regarding directed trusts was amended to add short descriptions for many of the cross-referenced statutes which may make that portion of the Trust Code easier for practitioners to use.

B. Amendments:

None.

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



516430

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Berman) recommended the following:

Senate Amendment (with title amendment)

Delete line 379
and insert:
officers, and employees acting for the trustee or trust
director.

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

And the title is amended as follows:

Delete line 28



516430

11 and insert:
12 trustee or trust director; conforming provisions to
13 changes made by the

By the Committee on Judiciary; and Senator Berman

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1 A bill to be entitled
 2 An act relating to estates and trusts; amending s.
 3 69.031, F.S.; requiring the court to allow an officer
 4 to elect to post and maintain a certain bond;
 5 requiring the court to vacate or terminate an order
 6 under certain circumstances; making technical changes;
 7 amending s. 732.507, F.S.; providing that certain
 8 provisions of a will are void upon dissolution of
 9 marriage; specifying when dissolution of marriage
 10 occurs; providing applicability; amending s. 736.0103,
 11 F.S.; defining terms; revising the definition of the
 12 term "terms of a trust"; amending s. 736.0105, F.S.;
 13 revising the exceptions for when the terms of a trust
 14 do not prevail over provisions of the Florida Trust
 15 Code; amending s. 736.0201, F.S.; authorizing certain
 16 proceedings to determine the homestead status of real
 17 property owned by a trust to be filed in the probate
 18 proceeding for the settlor's estate; requiring that
 19 such proceedings be governed by the Florida Probate
 20 Rules; amending s. 736.0603, F.S.; transferring
 21 provisions that authorize a trustee to follow certain
 22 directions; amending s. 736.0703, F.S.; conforming
 23 provisions to changes made by the act; repealing s.
 24 736.0808, F.S., relating to powers to direct; amending
 25 s. 736.1008, F.S.; specifying that certain claims
 26 barred against a trustee or trust director are also
 27 barred against certain persons acting for that
 28 trustee; conforming provisions to changes made by the
 29 act; amending s. 736.1017, F.S.; revising the

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30 information required to be included in a certification
 31 of trust; amending s. 736.1105, F.S.; revising the
 32 effects that subsequent marriages, births, adoptions,
 33 or dissolutions of marriage have on a revocable trust;
 34 providing construction; providing applicability;
 35 creating s. 736.1109, F.S.; specifying how title
 36 passes for certain devises of homesteads which violate
 37 the State Constitution; specifying that certain powers
 38 do not subject an interest in a protected homestead to
 39 certain claims; providing applicability; creating part
 40 XIV of chapter 736, F.S., entitled the "Florida
 41 Uniform Directed Trust Act"; creating s. 736.1401,
 42 F.S.; providing a short title; creating s. 736.1403,
 43 F.S.; providing applicability; providing for the
 44 validity of certain terms in a directed trust which
 45 designate principal places of administration; creating
 46 s. 736.1405, F.S.; defining the term "power of
 47 appointment"; providing applicability; specifying the
 48 types of powers granted to persons other than
 49 trustees; creating s. 736.1406, F.S.; authorizing the
 50 terms of a trust to grant a power of direction to a
 51 trust director; specifying the powers included in a
 52 power of direction; creating s. 736.1407, F.S.;
 53 providing for limitations on trust directors; creating
 54 s. 736.1408, F.S.; providing duties and liabilities
 55 for trust directors; creating s. 736.1409, F.S.;
 56 providing duties and liabilities for directed
 57 trustees; creating s. 736.141, F.S.; requiring a
 58 trustee to provide certain information to a trust

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59 director; requiring a trust director to provide
60 certain information to a trustee or another trust
61 director and a qualified beneficiary; providing that a
62 trustee or a trust director acting in reliance on
63 certain information is not liable for a breach of
64 trust in certain circumstances; creating s. 736.1411,
65 F.S.; specifying that trustees and trust directors do
66 not have a duty to monitor, inform, or advise
67 specified persons under certain circumstances;
68 creating s. 736.1412, F.S.; transferring provisions
69 relating to the appointment of trustees; creating s.
70 736.1413, F.S.; providing limitations on actions
71 against trust directors; creating s. 736.1414, F.S.;
72 authorizing trust directors to assert specified
73 defenses in certain actions; creating s. 736.1415,
74 F.S.; specifying that a trust director submits to
75 specified personal jurisdiction by accepting
76 appointment as a trust director; providing
77 construction; creating s. 736.1416, F.S.; requiring
78 trust directors to be considered a trustee for certain
79 purposes; authorizing certain persons to make a
80 specified written demand to accept or confirm prior
81 acceptance of trust directorships; creating part XV of
82 chapter 736, F.S., entitled the "Community Property
83 Trust Act"; creating s. 736.1501, F.S.; providing a
84 short title; creating s. 736.1502, F.S.; defining
85 terms; creating s. 736.1503, F.S.; providing that an
86 arrangement is a community property trust in certain
87 circumstances; creating s. 736.1504, F.S.; authorizing

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88 settlor spouses to agree upon certain terms in an
89 agreement establishing a community property trust;
90 specifying when a community property trust may be
91 amended or revoked; specifying qualified beneficiaries
92 of community property trusts; creating s. 736.1505,
93 F.S.; providing that settlor spouses may classify any
94 property as community property by transferring that
95 property to a community property trust regardless of
96 domicile; providing for enforceability and duration of
97 a community property trust; providing that the right
98 to manage and control certain property is determined
99 by the terms of the trust agreement; providing the
100 effect of distributions from a community property
101 trust; creating s. 736.1506, F.S.; providing for the
102 satisfaction of obligations incurred by one or both
103 spouses from a community property trust; creating s.
104 736.1507, F.S.; providing for the disposition or
105 distribution of certain property upon the death of a
106 spouse; creating s. 736.1508, F.S.; providing for the
107 termination of a community property trust upon
108 dissolution of marriage; creating s. 736.1509, F.S.;
109 providing that a community property trust does not
110 adversely affect certain rights of a child; creating
111 s. 736.151, F.S.; providing that certain property held
112 in a community property trust qualifies as homestead
113 property; creating s. 736.1511, F.S.; providing for
114 the application of the Internal Revenue Code to a
115 community property trust; creating s. 736.1512, F.S.;
116 providing that a community property trust is not

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117 enforceable in certain circumstances; amending ss.
 118 736.0802, 736.08125, and 738.104, F.S.; conforming
 119 cross-references; amending s. 744.3679, F.S.;
 120 conforming a provision to changes made by the act;
 121 providing a directive to the Division of Law Revision;
 122 providing for severability; providing effective dates.

123
 124 Be It Enacted by the Legislature of the State of Florida:

125
 126 Section 1. Effective upon this act becoming a law, section
 127 69.031, Florida Statutes, is amended to read:

128 69.031 Designated financial institutions for property
 129 ~~assets~~ in hands of guardians, curators, administrators,
 130 trustees, receivers, or other officers.—

131 (1) When it is expedient in the judgment of any court
 132 having jurisdiction of any estate in process of administration
 133 by any guardian, curator, executor, administrator, trustee,
 134 receiver, or other officer, because the size of the bond
 135 required of the officer is burdensome or for other cause, the
 136 court may order part or all of the personal property assets of
 137 the estate placed with a bank, trust company, or savings and
 138 loan association (which savings and loan association is a member
 139 of the Federal Savings and Loan Insurance Corporation and doing
 140 business in this state) designated by the court, consideration
 141 being given to any bank, trust company or savings and loan
 142 association proposed by the officer. Notwithstanding the
 143 foregoing, in probate proceedings and in accordance with s.
 144 733.402, the court shall allow the officer at any time to elect
 145 to post and maintain bond for the value of the personal

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146 property, or such other reasonable amount determined by the
 147 court, whereupon the court shall vacate or terminate any order
 148 establishing the depository. When the property is ~~assets are~~
 149 placed with the designated financial institution, it shall file
 150 a receipt therefor in the name of the estate and give the
 151 officer a copy. Such receipt shall acknowledge the property
 152 ~~assets~~ received by the financial institution. All interest,
 153 dividends, principal and other debts collected by the financial
 154 institution on account thereof shall be held by the financial
 155 institution in safekeeping, subject to the instructions of the
 156 officer authorized by order of the court directed to the
 157 financial institution.

158 (2) Accountings shall be made to the officer at reasonably
 159 frequent intervals. After the receipt for the original property
 160 ~~assets~~ has been filed by the financial institution, the court
 161 shall waive the bond given or to be given or reduce it so that
 162 it shall apply only to the estate remaining in the hands of the
 163 officer, whichever the court deems proper.

164 (3) When the court has ordered any property assets of an
 165 estate to be placed with a designated financial institution, any
 166 person or corporation having possession or control of any of the
 167 property assets, or owing interest, dividends, principal or
 168 other debts on account thereof, shall pay and deliver such
 169 property assets, interest, dividends, principal and other debts
 170 to the financial institution on its demand whether the officer
 171 has duly qualified or not, and the receipt of the financial
 172 institution relieves the person or corporation from further
 173 responsibility therefor.

174 (4) Any bank, trust company, or savings and loan

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175 association which is designated under this section, may accept
 176 or reject the designation in any instance, and shall file its
 177 acceptance or rejection with the court making the designation
 178 within 15 days after actual knowledge of the designation comes
 179 to the attention of the financial institution, and if the
 180 financial institution accepts, it shall be allowed a reasonable
 181 amount for its services and expenses which the court may allow
 182 as a charge against the property assets placed with the
 183 financial institution.

184 Section 2. Effective upon this act becoming a law, section
 185 732.507, Florida Statutes, is amended to read:

186 732.507 Effect of subsequent marriage, birth, adoption, or
 187 dissolution of marriage.—

188 (1) Neither subsequent marriage, birth, nor adoption of
 189 descendants shall revoke the prior will of any person, but the
 190 pretermitted child or spouse shall inherit as set forth in ss.
 191 732.301 and 732.302, regardless of the prior will.

192 (2) Any provision of a will ~~executed by a married person~~
 193 that affects the testator's spouse is of that person shall
 194 ~~become void upon dissolution of the marriage of the testator and~~
 195 the spouse, whether the marriage occurred before or after the
 196 execution of such will. Upon dissolution of marriage the divorcee
 197 ~~of that person or upon the dissolution or annulment of the~~
 198 ~~marriage. After the dissolution, divorce, or annulment, the will~~
 199 ~~shall be administered and construed as if the former spouse had~~
 200 ~~died at the time of the dissolution of marriage, divorce, or~~
 201 ~~annulment of the marriage, unless the will or the dissolution or~~
 202 ~~divorce judgment expressly provides otherwise.~~

203 (a) Dissolution of marriage occurs at the time the

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204 decendent's marriage is judicially dissolved or declared invalid
 205 by court order.

206 (b) This subsection does not invalidate a provision of a
 207 will:

208 1. Executed by the testator after the dissolution of the
 209 marriage;

210 2. If there is a specific intention to the contrary stated
 211 in the will; or

212 3. If the dissolution of marriage judgment expressly
 213 provides otherwise.

214 (3) This section applies to wills of decedents who die on
 215 or after the effective date of this section.

216 Section 3. Present subsections (6) through (13), (14)
 217 through (21), and (22) and (23) of section 736.0103, Florida
 218 Statutes, are redesignated as subsections (8) through (15), (17)
 219 through (24), and (26) and (27), respectively, new subsections
 220 (6), (7), and (16) and subsection (25) are added to that
 221 section, and present subsection (21) of that section is amended,
 222 to read:

223 736.0103 Definitions.—Unless the context otherwise
 224 requires, in this code:

225 (6) "Directed trust" means a trust for which the terms of
 226 the trust grant a power of direction.

227 (7) "Directed trustee" means a trustee that is subject to a
 228 trust director's power of direction.

229 (16) "Power of direction" means a power over a trust
 230 granted to a person by the terms of the trust to the extent the
 231 power is exercisable while the person is not serving as a
 232 trustee. The term includes a power over the investment,

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233 management, or distribution of trust property, a power to amend
 234 a trust instrument or terminate a trust, or a power over other
 235 matters of trust administration. The term excludes the powers
 236 excluded from part XIV of this chapter under s. 736.1405(2).

237 ~~(24)-(21)~~ "Terms of a trust" means:

238 (a) Except as otherwise provided in paragraph (b), the
 239 manifestation of the settlor's intent regarding a trust's
 240 provisions as:

241 1. Expressed in the trust instrument; or
 242 2. Established by other evidence that would be admissible
 243 in a judicial proceeding; or

244 (b) The trust's provisions as established, determined, or
 245 amended by:

246 1. A trustee or trust director in accordance with
 247 applicable law;

248 2. Court order; or

249 3. A nonjudicial settlement agreement under s. 736.0111,
 250 relating to nonjudicial settlement agreements ~~the manifestation~~
 251 of the settlor's intent regarding a trust's provisions as
 252 expressed in the trust instrument or as may be established by
 253 other evidence that would be admissible in a judicial
 254 proceeding.

255 (25) "Trust director" means a person who is granted a power
 256 of direction by the terms of a trust to the extent the power is
 257 exercisable while the person is not serving as a trustee. The
 258 person is a trust director whether or not the terms of the trust
 259 refer to the person as a trust director and whether or not the
 260 person is a beneficiary or settlor of the trust.

261 Section 4. Paragraph (b) of subsection (2) of section

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262 736.0105, Florida Statutes, is amended to read:

263 736.0105 Default and mandatory rules.—

264 (2) The terms of a trust prevail over any provision of this
 265 code except:

266 (b) Subject to s. 736.1409, relating to the duties and
 267 liabilities of a directed trustee; s. 736.1411, relating to
 268 limitations on duties of a trustee or trust director to monitor,
 269 inform, or advise on matters involving the other; and s.
 270 736.1412, relating to the allocation of powers among cotrustees,
 271 requirements for excluded cotrustees to act as a directed
 272 trustee, and liability and related obligations of directing
 273 cotrustees, the duty of the trustee to act in good faith and in
 274 accordance with the terms and purposes of the trust and the
 275 interests of the beneficiaries.

276 Section 5. Subsection (1) of section 736.0201, Florida
 277 Statutes, is amended, and subsection (7) is added to that
 278 section, to read:

279 736.0201 Role of court in trust proceedings.—

280 (1) Except as provided in subsections (5), ~~and~~ (6), and (7)
 281 and s. 736.0206, judicial proceedings concerning trusts shall be
 282 commenced by filing a complaint and shall be governed by the
 283 Florida Rules of Civil Procedure.

284 (7) A proceeding to determine the homestead status of real
 285 property owned by a trust may be filed in the probate proceeding
 286 for the settlor's estate if the settlor was treated as the owner
 287 of the interest held in the trust under s. 732.4015. The
 288 proceeding shall be governed by the Florida Probate Rules.

289 Section 6. Subsection (3) is added to section 736.0603,
 290 Florida Statutes, to read:

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291 736.0603 Settlor's powers; powers of withdrawal.-
 292 (3) Subject to ss. 736.0403(2) and 736.0602(3) (a), the
 293 trustee may follow a direction of the settlor that is contrary
 294 to the terms of the trust while a trust is revocable.
 295 Section 7. Subsections (3), (7), and (9) of section
 296 736.0703, Florida Statutes, are amended to read:
 297 736.0703 Cotrustees.-
 298 (3) Subject to s. 736.1412, relating to the allocation of
 299 powers among cotrustees, requirements for excluded cotrustees to
 300 act as a directed trustee, and liability and related obligations
 301 of directing cotrustees, a cotrustee must participate in the
 302 performance of a trustee's function unless the cotrustee is
 303 unavailable to perform the function because of absence, illness,
 304 disqualification under other provision of law, or other
 305 temporary incapacity or the cotrustee has properly delegated the
 306 performance of the function to another cotrustee.
 307 (7) Except as otherwise provided in s. 736.1412, relating
 308 to the allocation of powers among cotrustees, requirements for
 309 excluded cotrustees to act as a directed trustee, and liability
 310 and related obligations of directing cotrustees ~~subsection (9),~~
 311 each cotrustee shall exercise reasonable care to:
 312 (a) Prevent a cotrustee from committing a breach of trust.
 313 (b) Compel a cotrustee to redress a breach of trust.
 314 ~~(9) If the terms of a trust provide for the appointment of~~
 315 ~~more than one trustee but confer upon one or more of the~~
 316 ~~trustees, to the exclusion of the others, the power to direct or~~
 317 ~~prevent specified actions of the trustees, the excluded trustees~~
 318 ~~shall act in accordance with the exercise of the power. Except~~
 319 ~~in cases of willful misconduct on the part of the excluded~~

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320 ~~trustee, an excluded trustee is not liable, individually or as a~~
 321 ~~fiduciary, for any consequence that results from compliance with~~
 322 ~~the exercise of the power. An excluded trustee does not have a~~
 323 ~~duty or an obligation to review, inquire, investigate, or make~~
 324 ~~recommendations or evaluations with respect to the exercise of~~
 325 ~~the power. The trustee or trustees having the power to direct or~~
 326 ~~prevent actions of the excluded trustees shall be liable to the~~
 327 ~~beneficiaries with respect to the exercise of the power as if~~
 328 ~~the excluded trustees were not in office and shall have the~~
 329 ~~exclusive obligation to account to and to defend any action~~
 330 ~~brought by the beneficiaries with respect to the exercise of the~~
 331 ~~power. The provisions of s. 736.0808(2) do not apply if the~~
 332 ~~person entrusted with the power to direct the actions of the~~
 333 ~~excluded trustee is also a cotrustee.~~
 334 Section 8. Section 736.0808, Florida Statutes, is repealed.
 335 Section 9. Present subsection (7) of section 736.1008,
 336 Florida Statutes, is redesignated as subsection (8), a new
 337 subsection (7) is added to that section, and paragraph (a) of
 338 subsection (1), subsection (2), and paragraphs (a) and (c) of
 339 subsection (4) of that section are amended, to read:
 340 736.1008 Limitations on proceedings against trustees.-
 341 (1) Except as provided in subsection (2), all claims by a
 342 beneficiary against a trustee for breach of trust are barred as
 343 provided in chapter 95 as to:
 344 (a) All matters adequately disclosed in a trust disclosure
 345 document issued by the trustee or a trust director, with the
 346 limitations period beginning on the date of receipt of adequate
 347 disclosure.
 348 (2) Unless sooner barred by adjudication, consent, or

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349 limitations, a beneficiary is barred from bringing an action
 350 against a trustee for breach of trust with respect to a matter
 351 that was adequately disclosed in a trust disclosure document
 352 unless a proceeding to assert the claim is commenced within 6
 353 months after receipt from the trustee or a trust director of the
 354 trust disclosure document or a limitation notice that applies to
 355 that disclosure document, whichever is received later.

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

357 (a) "Trust disclosure document" means a trust accounting or
 358 any other written report of the trustee or a trust director. A
 359 trust disclosure document adequately discloses a matter if the
 360 document provides sufficient information so that a beneficiary
 361 knows of a claim or reasonably should have inquired into the
 362 existence of a claim with respect to that matter.

363 (c) "Limitation notice" means a written statement of the
 364 trustee or a trust director that an action by a beneficiary
 365 ~~against the trustee~~ for breach of trust based on any matter
 366 adequately disclosed in a trust disclosure document may be
 367 barred unless the action is commenced within 6 months after
 368 receipt of the trust disclosure document or receipt of a
 369 limitation notice that applies to that trust disclosure
 370 document, whichever is later. A limitation notice may but is not
 371 required to be in the following form: "An action for breach of
 372 trust based on matters disclosed in a trust accounting or other
 373 written report of the trustee or a trust director may be subject
 374 to a 6-month statute of limitations from the receipt of the
 375 trust accounting or other written report. If you have questions,
 376 please consult your attorney."

377 (7) Any claim barred against a trustee or trust director

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378 under this section is also barred against the directors,
 379 officers, and employees acting for the trustee.

380 Section 10. Present paragraphs (e), (f), and (g) of
 381 subsection (1) of section 736.1017, Florida Statutes, are
 382 redesignated as paragraphs (f), (g), and (h), respectively, and
 383 a new paragraph (e) is added to that subsection, to read:

384 736.1017 Certification of trust.—

385 (1) Instead of furnishing a copy of the trust instrument to
 386 a person other than a beneficiary, the trustee may furnish to
 387 the person a certification of trust containing the following
 388 information:

389 (e) Whether the trust contains any powers of direction, and
 390 if so, the identity of the current trust directors, the trustee
 391 powers subject to a power of direction, and whether the trust
 392 directors have directed or authorized the trustee to engage in
 393 the proposed transaction for which the certification of trust
 394 was issued.

395 Section 11. Effective upon this act becoming a law, section
 396 736.1105, Florida Statutes, is amended to read:

397 (Substantial rewording of section. See
 398 s. 736.1105, F.S., for present text.)

399 736.1105 Effect of subsequent marriage, birth, adoption, or
 400 dissolution of marriage.—

401 (1) Neither subsequent marriage, birth, nor adoption of
 402 descendants shall revoke the revocable trust of any person.

403 (2) Any provision of a revocable trust that affects the
 404 settlor's spouse is void upon dissolution of the marriage of the
 405 settlor and the spouse, whether the marriage occurred before or
 406 after the execution of such revocable trust. Upon dissolution of

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407 marriage, the revocable trust shall be construed as if the
 408 spouse had died at the time of the dissolution of marriage.
 409 (a) Dissolution of marriage occurs at the time the
 410 decedent's marriage is judicially dissolved or declared invalid
 411 by court order.
 412 (b) This subsection does not invalidate a provision of a
 413 revocable trust:
 414 1. Executed by the settlor after the dissolution of the
 415 marriage;
 416 2. If there is a specific intention to the contrary stated
 417 in the revocable trust; or
 418 3. If the dissolution of marriage judgment expressly
 419 provides otherwise.
 420 (3) This section applies to revocable trusts of decedents
 421 who die on or after the effective date of this section.
 422 Section 12. Section 736.1109, Florida Statutes, is created
 423 to read:
 424 736.1109 Testamentary and revocable trusts; homestead
 425 protections.—
 426 (1) If a devise of homestead under a trust violates the
 427 limitations on the devise of homestead in s. 4(c), Art. X of the
 428 State Constitution, title shall pass as provided in s. 732.401
 429 at the moment of death.
 430 (2) A power of sale or general direction to pay debts,
 431 expenses and claims within the trust instrument does not subject
 432 an interest in the protected homestead to the claims of
 433 decedent's creditors, expenses of administration, and
 434 obligations of the decedent's estate as provided in s.
 435 736.05053.

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436 (3) If a trust directs the sale of property that would
 437 otherwise qualify as protected homestead, and the property is
 438 not subject to the constitutional limitations on the devise of
 439 homestead under the State Constitution, title shall remain
 440 vested in the trustee and subject to the provisions of the
 441 trust.
 442 (4) This section applies only to trusts described in s.
 443 733.707(3) and to testamentary trusts.
 444 (5) This section is intended to clarify existing law and
 445 applies to the administration of trusts and estates of decedents
 446 who die before, on, or after July 1, 2021.
 447 Section 13. Part XIV of chapter 736, Florida Statutes,
 448 consisting of ss. 736.1401-736.1416, Florida Statutes, is
 449 created and entitled the "Florida Uniform Directed Trust Act."
 450 Section 14. Section 736.1401, Florida Statutes, is created
 451 to read:
 452 736.1401 Short title.—This part may be cited as the
 453 "Florida Uniform Directed Trust Act."
 454 Section 15. Section 736.1403, Florida Statutes, is created
 455 to read:
 456 736.1403 Application; principal place of administration.—
 457 (1) This part applies to a trust subject to this chapter,
 458 whenever created, that has its principal place of administration
 459 in the state, subject to the following rules:
 460 (a) If the trust was created before July 1, 2021, this part
 461 applies only to a decision or action occurring on or after July
 462 1, 2021.
 463 (b) If the principal place of administration of the trust
 464 is changed to the state on or after July 1, 2021, this part

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465 applies only to a decision or action occurring on or after the
 466 date of the change.

467 (2) In addition s. 736.0108, relating to a trust's
 468 principal place of administration, in a directed trust, terms of
 469 the trust that designate the principal place of administration
 470 of the trust in the state are valid and controlling if a trust
 471 director's principal place of business is located in or a trust
 472 director is a resident of the state.

473 Section 16. Section 736.1405, Florida Statutes, is created
 474 to read:

475 736.1405 Exclusions.-

476 (1) As used in this section, the term "power of
 477 appointment" means a power that enables a person acting in a
 478 nonfiduciary capacity to designate a recipient of an ownership
 479 interest in or another power of appointment over trust property.

480 (2) Unless the terms of a trust expressly provide otherwise
 481 by specific reference to this part, section, or paragraph, this
 482 part does not apply to:

483 (a) A power of appointment;

484 (b) A power to appoint or remove a trustee or trust
 485 director;

486 (c) A power of a settlor over a trust while the trust is
 487 revocable by that settlor;

488 (d) A power of a beneficiary over a trust to the extent the
 489 exercise or nonexercise of the power affects the beneficial
 490 interest of:

491 1. The beneficiary; or

492 2. Another beneficiary represented by the beneficiary under
 493 ss. 736.0301-736.0305 with respect to the exercise or

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494 nonexercise of the power;

495 (e) A power over a trust if the terms of the trust provide
 496 that the power is held in a nonfiduciary capacity; and

497 1. The power must be held in a nonfiduciary capacity to
 498 achieve the settlor's tax objectives under the United States
 499 Internal Revenue Code of 1986, as amended, and regulations
 500 issued thereunder, as amended; or

501 2. It is a power to reimburse the settlor for all or a part
 502 of the settlor's income tax liabilities attributable to the
 503 income of the trust; or

504 (f) A power to add or to release a power under the trust
 505 instrument if the power subject to addition or release causes
 506 the settlor to be treated as the owner of all or any portion of
 507 the trust for federal income tax purposes.

508 (3) Unless the terms of a trust provide otherwise, a power
 509 granted to a person other than a trustee:

510 (a) To designate a recipient of an ownership interest in
 511 trust property, including a power to terminate a trust, is a
 512 power of appointment and not a power of direction.

513 (b) To create, modify, or terminate a power of appointment
 514 is a power of direction and not a power of appointment, except a
 515 power to create a power of appointment that is an element of a
 516 broader power to affect an ownership interest in trust property
 517 beyond the mere creation of a power of appointment, such as a
 518 power to appoint trust property in further trust, is a power of
 519 appointment and not a power of direction.

520 Section 17. Section 736.1406, Florida Statutes, is created
 521 to read:

522 736.1406 Power of trust director.-

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523 (1) Subject to s. 736.1407, relating to trust directors
 524 being subject to the same rules as a trustee regarding Social
 525 Security Act reimbursement requirements and charitable trust
 526 instruments, the terms of a trust may grant a power of direction
 527 to a trust director.

528 (2) A power of direction includes only those powers granted
 529 by the terms of the trust.

530 (3) Unless the terms of a trust provide otherwise:

531 (a) A trust director may exercise any further power
 532 appropriate to the exercise or nonexercise of a power of
 533 direction granted to the trust director under subsection (1);
 534 and

535 (b) Trust directors with joint powers must act by majority
 536 decision.

537 Section 18. Section 736.1407, Florida Statutes, is created
 538 to read:

539 736.1407 Limitations on trust director.—A trust director is
 540 subject to the same rules as a trustee in a like position and
 541 under similar circumstances in the exercise or nonexercise of a
 542 power of direction or further power under s. 736.1406(3) (a),
 543 relating to additional power granted to a trust director in
 544 furtherance of an express power of direction, regarding:

545 (1) A payback provision in the terms of a trust necessary
 546 to comply with the reimbursement requirements of s. 1917 of the
 547 Social Security Act, 42 U.S.C. s. 1396p(d) (4) (A), as amended,
 548 and regulations issued thereunder, as amended.

549 (2) A charitable interest in the trust, including notice
 550 regarding the interest to the Attorney General.

551 Section 19. Section 736.1408, Florida Statutes, is created

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552 to read:

553 736.1408 Duty and liability of trust director.—

554 (1) Subject to subsection (2), with respect to a power of
 555 direction or further power under s. 736.1406(3) (a), relating to
 556 additional power granted to a trust director in furtherance of
 557 an express power of direction:

558 (a) A trust director has the same fiduciary duty and
 559 liability in the exercise or nonexercise of the power:

560 1. If the power is held individually, as a sole trustee in
 561 a like position and under similar circumstances; or

562 2. If the power is held jointly with a trustee or another
 563 trust director, as a cotrustee in a like position and under
 564 similar circumstances.

565 (b) The terms of the trust may vary the trust director's
 566 duty or liability to the same extent the terms of the trust may
 567 vary the duty or liability of a trustee in a like position and
 568 under similar circumstances.

569 (2) Unless the terms of a trust provide otherwise, if a
 570 trust director is licensed, certified, or otherwise authorized
 571 or permitted by law other than this part to provide health care
 572 in the ordinary course of the trust director's business or
 573 practice of a profession, to the extent the trust director acts
 574 in that capacity the trust director has no duty or liability
 575 under this part.

576 (3) The terms of a trust may impose a duty or liability on
 577 a trust director in addition to the duties and liabilities under
 578 this section.

579 Section 20. Section 736.1409, Florida Statutes, is created
 580 to read:

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581 736.1409 Duty and liability of directed trustee.-
 582 (1) Subject to subsection (2), a directed trustee shall
 583 take reasonable action to comply with a trust director's
 584 exercise or nonexercise of a power of direction or further power
 585 under s. 736.1406(3)(a), relating to additional power granted to
 586 a trust director in furtherance of an express power of
 587 direction, and the trustee is not liable for such reasonable
 588 action.

589 (2) A directed trustee may not comply with a trust
 590 director's exercise or nonexercise of a power of direction or
 591 further power under s. 736.1406(3)(a), relating to additional
 592 power granted to a trust director in furtherance of an express
 593 power of direction, to the extent that by complying the trustee
 594 would engage in willful misconduct.

595 (3) Before complying with a trust director's exercise of a
 596 power of direction, the directed trustee shall determine whether
 597 or not the exercise is within the scope of the trust director's
 598 power of direction. The exercise of a power of direction is not
 599 outside the scope of a trust director's power of direction
 600 merely because the exercise constitutes or may constitute a
 601 breach of trust.

602 (4) An exercise of a power of direction under which a trust
 603 director may release a trustee or another trust director from
 604 liability for breach of trust is not effective if:

605 (a) The breach involved the trustee's or other director's
 606 willful misconduct;

607 (b) The release was induced by improper conduct of the
 608 trustee or other director in procuring the release; or

609 (c) At the time of the release, the trust director did not

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610 know the material facts relating to the breach.
 611 (5) A directed trustee that has reasonable doubt about its
 612 duty under this section may apply to the court for instructions,
 613 with attorney fees and costs to be paid from assets of the trust
 614 as provided in this code.

615 (6) The terms of a trust may impose a duty or liability on
 616 a directed trustee in addition to the duties and liabilities
 617 under this part.

618 Section 21. Section 736.141, Florida Statutes, is created
 619 to read:
 620 736.141 Duty to provide information.-

621 (1) Subject to s. 736.1411, relating to limitations on the
 622 duties of trustees or trust directors to monitor, inform, or
 623 advise on matters involving the other, a trustee shall provide
 624 information to a trust director to the extent the information is
 625 reasonably related to the powers or duties of the trust
 626 director.

627 (2) Subject to s. 736.1411, relating to limitations on the
 628 duties of trustees or trust directors to monitor, inform, or
 629 advise on matters involving the other, a trust director shall
 630 provide information to a trustee or another trust director to
 631 the extent the information is reasonably related to the powers
 632 or duties of the trustee or other trust director.

633 (3) A trustee that acts in reliance on information provided
 634 by a trust director is not liable for a breach of trust to the
 635 extent the breach resulted from the reliance, unless by so
 636 acting the trustee engages in willful misconduct.

637 (4) A trust director that acts in reliance on information
 638 provided by a trustee or another trust director is not liable

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639 for a breach of trust to the extent the breach resulted from the
 640 reliance, unless by so acting the trust director engages in
 641 willful misconduct.

642 (5) A trust director shall provide information within the
 643 trust director's knowledge or control to a qualified beneficiary
 644 upon a written request of a qualified beneficiary to the extent
 645 the information is reasonably related to the powers or duties of
 646 the trust director.

647 Section 22. Section 736.1411, Florida Statutes, is created
 648 to read:

649 736.1411 No duty to monitor, inform, or advise.-

650 (1) Notwithstanding s. 736.1409(1), relating to the duty of
 651 a directed trustee to take reasonable action when directed and
 652 to the release of liability for such action, unless the terms of
 653 a trust provide otherwise:

654 (a) A trustee does not have a duty to:

655 1. Monitor a trust director; or

656 2. Inform or give advice to a settlor, beneficiary,
 657 trustee, or trust director concerning an instance in which the
 658 trustee might have acted differently than the trust director.

659 (b) By taking an action described in paragraph (a), a
 660 trustee does not assume the duty excluded by paragraph (a).

661 (2) Notwithstanding s. 736.1408(1), relating to the
 662 fiduciary duty of a trust director, unless the terms of a trust
 663 provide otherwise:

664 (a) A trust director does not have a duty to:

665 1. Monitor a trustee or another trust director; or

666 2. Inform or give advice to a settlor, beneficiary,
 667 trustee, or another trust director concerning an instance in

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668 which the trust director might have acted differently than a
 669 trustee or another trust director.

670 (b) By taking an action described in paragraph (a), a trust
 671 director does not assume the duty excluded by paragraph (a).

672 Section 23. Section 736.1412, Florida Statutes, is created
 673 to read:

674 736.1412 Application to cotrustee.-

675 (1) The terms of a trust may provide for the appointment of
 676 more than one trustee but confer upon one or more of the
 677 trustees, to the exclusion of the others, the power to direct or
 678 prevent specified actions of the trustees.

679 (2) The excluded trustees shall act in accordance with the
 680 exercise of the power in the manner, and with the same duty and
 681 liability, as directed trustees with respect to a trust
 682 director's power of direction under s. 736.1409, relating to the
 683 duties and liabilities of a directed trustee; s. 736.141,
 684 relating to the duties of a trustee and trust director to
 685 provide and rely on information; and s. 736.1411, relating to
 686 limitations on the duties of trustees or trust directors to
 687 monitor, inform, or advise on matters involving the other.

688 (3) The trustee or trustees having the power to direct or
 689 prevent actions of the excluded trustees shall be liable to the
 690 beneficiaries with respect to the exercise of the power as if
 691 the excluded trustees were not in office and shall have the
 692 exclusive obligation to account to and to defend any action
 693 brought by the beneficiaries with respect to the exercise of the
 694 power.

695 Section 24. Section 736.1413, Florida Statutes, is created
 696 to read:

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697 736.1413 Limitation of action against trust director.-
 698 (1) An action against a trust director for breach of trust
 699 must be commenced within the same limitation period for an
 700 action for breach of trust against a trustee in a like position
 701 and under similar circumstances under s. 736.1008, relating to
 702 limitations on proceedings against trustees.
 703 (2) A trust accounting or any other written report of a
 704 trustee or a trust director has the same effect on the
 705 limitation period for an action against a trust director for
 706 breach of trust that such trust accounting or written report
 707 would have under s. 736.1008, relating to limitations on
 708 proceedings against trustees, in an action for breach of trust
 709 against a trustee in a like position and under similar
 710 circumstances.
 711 Section 25. Section 736.1414, Florida Statutes, is created
 712 to read:
 713 736.1414 Defenses in action against trust director.-In an
 714 action against a trust director for breach of trust, the trust
 715 director may assert the same defenses a trustee in a like
 716 position and under similar circumstances could assert in an
 717 action for breach of trust against the trustee.
 718 Section 26. Section 736.1415, Florida Statutes, is created
 719 to read:
 720 736.1415 Jurisdiction over trust director.-
 721 (1) By accepting appointment as a trust director of a trust
 722 subject to this part, the trust director submits to the personal
 723 jurisdiction of the courts of the state regarding any matter
 724 related to a power or duty of the trust director.
 725 (2) This section does not preclude other methods of

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726 obtaining jurisdiction over a trust director.
 727 Section 27. Section 736.1416, Florida Statutes, is created
 728 to read:
 729 736.1416 Office of trust director.-
 730 (1) Unless the terms of a trust provide otherwise, a trust
 731 director shall be considered a trustee for purposes of the
 732 following:
 733 (a) Role of court in trust proceedings under s. 736.0201.
 734 (b) Proceedings for review of employment of agents and
 735 review of compensation of trustee and employees of a trust under
 736 s. 736.0206.
 737 (c) Representation by holder of power of appointment under
 738 s. 736.0302(4), relating to how trustees with discretionary
 739 power to make trust distributions do not have a power of
 740 appointment for purposes of representing persons affected by
 741 such power.
 742 (d) Prohibition on a trustee acting as a designated
 743 representative under s. 736.0306(2).
 744 (e) Validation of power to select a beneficiary from an
 745 indefinite class under s. 736.0402(3).
 746 (f) As to allowing application by the trust director for
 747 judicial modification of a trust when such modification is not
 748 inconsistent with the settlor's purpose under s. 736.04113, for
 749 judicial construction of provisions relating to federal taxes
 750 under s. 736.04114, for judicial modification of a trust when
 751 such modification is in the best interest of the beneficiaries
 752 under s. 736.04115, or for judicial modification or termination
 753 of an uneconomic trust under s. 736.0414(2), if the trust
 754 director is so authorized by the terms of the trust.

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755 (g) Discretionary trusts and the effect of a standard under
 756 s. 736.0504, relating to special provisions regarding
 757 discretionary trusts.
 758 (h) Trust assets not being subject to creditor claims by
 759 reason of discretionary powers granted to a trustee under s.
 760 736.0505(1)(c).
 761 (i) A trustee's duty to pay trust obligations and expenses
 762 before paying obligations and expenses of the settlor's estate
 763 under s. 736.05053(4).
 764 (j) Acceptance or declination of a trusteeship under s.
 765 736.0701.
 766 (k) Requirement to give bond to secure performance under
 767 certain circumstances and court discretions relating to such
 768 bonds under s. 736.0702.
 769 (l) Filling trustee vacancies and court appointment of an
 770 additional trustee or special fiduciary under s. 736.0704.
 771 (m) Resignation of a trustee under s. 736.0705, including
 772 requirements, court authorizations, and remaining liabilities.
 773 (n) Court removal of a trustee, including who may request a
 774 removal, under s. 736.0706, but not to give the trust director
 775 the power to request removal of a trustee.
 776 (o) Reasonable compensation of a trustee or professional
 777 acting as a trustee under s. 736.0708.
 778 (p) Entitlement of a trustee to reimbursement of expenses
 779 and liens to secure advances under s. 736.0709.
 780 (q) Authority to pay costs or attorney fees without
 781 approval under s. 736.0802(10), if the trust director has a
 782 power of direction or, if the trust director has a further power
 783 to direct, the payment of such costs or attorney fees under s.

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784 736.1406(2), relating to the explicit power of direction granted
 785 to a trust director, or s. 736.1406(3)(a), relating to the
 786 implied additional power of a director in furtherance of an
 787 express power of direction.
 788 (r) Limitations on a trustee's discretionary powers under
 789 s. 736.0814.
 790 (s) Administration of trusts by trustees without regard to
 791 pending contests or proceedings, except as the court directs,
 792 under s. 736.08165.
 793 (t) A trustee's obligation to invest in accordance with
 794 chapter 518 under s. 736.0901.
 795 (u) The exception to the prudent investor rule for life
 796 insurance under s. 736.0902.
 797 (v) Remedies available for a trustee breach of trust under
 798 s. 736.1001.
 799 (w) Damages against a trustee for breach of trust under s.
 800 736.1002.
 801 (x) A trustee's immunity from liability for loss or no
 802 profit under s. 736.1003 if there is no breach of trust.
 803 (y) Court-awarded attorney fees and costs under s. 736.1004
 804 for breach of trust challenges.
 805 (z) Fees available to a trustee's attorney for
 806 extraordinary service under s. 736.1007(5), court variance of
 807 compensation for a trustee's attorney under s. 736.1007(6), and
 808 agreements between a settlor and an attorney for fees to be
 809 provided to a trustee under s. 736.1007(7).
 810 (aa) A trustee's immunity from liability for a breach of
 811 trust under s. 736.1009 if the trustee relied on the trust
 812 instrument terms.

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813 (bb) Limitations on a trustee's liability for acting
 814 without knowledge of relevant events under s. 736.1010.
 815 (cc) Limitations on a trustee's exculpation of liability
 816 under the terms of a trust under s. 736.1011.
 817 (dd) The release of a trustee from liability with consent,
 818 the release or ratification of a beneficiary, and the
 819 limitations on such actions under s. 736.1012.
 820 (ee) Limitations on imposing liability on a trustee for
 821 obligations of a settlor under s. 736.1014.
 822 (2) If a person has not accepted a trust directorship under
 823 the terms of the trust or has accepted or declined a trusteeship
 824 under s. 736.0701 or a trustee, settlor, or a qualified
 825 beneficiary of the trust is uncertain whether such acceptance
 826 has occurred, a trustee, settlor, or a qualified beneficiary of
 827 the trust may make a written demand on a person designated to
 828 serve as a trust director, with a written copy to the trustees,
 829 to accept or confirm prior acceptance of the trust directorship
 830 in writing. A written acceptance, written acknowledgment of
 831 prior acceptance, or written declination of the trust
 832 directorship shall be delivered by the designated trust director
 833 within 60 days after receipt of such demand to all trustees,
 834 qualified beneficiaries, and the settlor if living.
 835 Section 28. Part XV of chapter 736, Florida Statutes,
 836 consisting of ss. 736.1501-736.1512, Florida Statutes, is
 837 created and entitled the "Community Property Trust Act."
 838 Section 29. Section 736.1501, Florida Statutes, is created
 839 to read:
 840 736.1501 Short title.—This part may be cited as the
 841 "Community Property Trust Act."

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842 Section 30. Section 736.1502, Florida Statutes, is created
 843 to read:
 844 736.1502 Definitions.—Unless the context otherwise
 845 requires, as used in this part:
 846 (1) "Community property" means the property and the
 847 appreciation of and income from the property owned by a
 848 qualified trustee of a community property trust during the
 849 marriage of the settlor spouses. The property owned by a
 850 community property trust pursuant to this part and the
 851 appreciation of and income from such property shall be deemed to
 852 be community property for purposes of general law.
 853 (2) "Community property trust" means an express trust that
 854 complies with s. 736.1503 and is created on or after July 1,
 855 2021.
 856 (3) "Decree" means a judgment or other order of a court of
 857 competent jurisdiction.
 858 (4) "Dissolution" means either:
 859 (a) Termination of a marriage by a decree of dissolution,
 860 divorce, annulment, or declaration of invalidity; or
 861 (b) Entry of a decree of legal separation maintenance.
 862 (5) "During marriage" means a period that begins at
 863 marriage and ends upon the dissolution of marriage or upon the
 864 death of a spouse.
 865 (6) "Qualified trustee" means either:
 866 (a) A natural person who is a resident of the state; or
 867 (b) A company authorized to act as a trustee in the state.
 868 A qualified trustee's powers include, but are not limited to,
 869 maintaining records for the trust on an exclusive or a
 870 maintaining records for the trust on an exclusive or a

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871 nonexclusive basis and preparing or arranging for the
 872 preparation of, on an exclusive or a nonexclusive basis, any
 873 income tax returns that must be filed by the trust.

874 (7) "Settlor spouses" means a married couple who
 875 establishes a community property trust pursuant to this part.

876 Section 31. Section 736.1503, Florida Statutes, is created
 877 to read:

878 736.1503 Requirements for community property trust.—An
 879 arrangement is a community property trust if one or both settlor
 880 spouses transfer property to a trust that:

881 (1) Expressly declares that the trust is a community
 882 property trust within the meaning of this part.

883 (2) Has at least one trustee who is a qualified trustee,
 884 provided that both spouses or either spouse also may be a
 885 trustee.

886 (3) Is signed by both settlor spouses consistent with the
 887 formalities required for the execution of a trust under this
 888 chapter.

889 (4) Contains substantially the following language in
 890 capital letters at the beginning of the community property trust
 891 agreement:

892 THE CONSEQUENCES OF THIS COMMUNITY PROPERTY TRUST MAY
 893 BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR
 894 RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD
 895 PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE DURING THE
 896 COURSE OF YOUR MARRIAGE, AT THE TIME OF A DIVORCE, AND
 897 UPON THE DEATH OF YOU OR YOUR SPOUSE. ACCORDINGLY,
 898 THIS TRUST AGREEMENT SHOULD BE SIGNED ONLY AFTER
 899

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900 CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT
 901 THIS TRUST AGREEMENT, YOU SHOULD SEEK COMPETENT AND
 902 INDEPENDENT LEGAL ADVICE.

903
 904 Section 32. Section 736.1504, Florida Statutes, is created
 905 to read:

906 736.1504 Agreement establishing community property trust;
 907 amendments and revocation.—

908 (1) In the agreement establishing a community property
 909 trust, the settlor spouses may agree upon:

910 (a) The rights and obligations in the property transferred
 911 to the trust, notwithstanding when and where the property is
 912 acquired or located.

913 (b) The management and control of the property transferred
 914 into the trust.

915 (c) The disposition of the property transferred to the
 916 trust on dissolution, death, or the occurrence or nonoccurrence
 917 of another event, subject to ss. 736.1507 and 736.1508.

918 (d) Whether the trust is revocable or irrevocable.

919 (e) Any other matter that affects the property transferred
 920 to the trust and does not violate public policy or general law
 921 imposing a criminal penalty, or result in the property not being
 922 treated as community property under the laws of any
 923 jurisdiction.

924 (2) In the event of the death of a settlor spouse, the
 925 surviving spouse may amend a community property trust regarding
 926 the disposition of that spouse's one-half share of the community
 927 property, regardless of whether the agreement provides that the
 928 community property trust is irrevocable.

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929 (3) A community property trust may be amended or revoked by
 930 the settlor spouses unless the agreement itself specifically
 931 provides that the community property trust is irrevocable.

932 (4) Notwithstanding any other provision of this code, the
 933 settlor spouses shall be deemed to be the only qualified
 934 beneficiaries of a community property trust until the death of
 935 one of the settlor spouses, regardless of whether the trust is
 936 revocable or irrevocable. After the death of one of the settlor
 937 spouses, the surviving spouse shall be deemed to be the only
 938 qualified beneficiary as to his or her share of the community
 939 property trust.

940 Section 33. Section 736.1505, Florida Statutes, is created
 941 to read:

942 736.1505 Classification of property as community property;
 943 enforcement; duration; management and control; effect of
 944 distributions.-

945 (1) Whether both, one, or neither is domiciled in the
 946 state, settlor spouses may classify any or all of their property
 947 as community property by transferring that property to a
 948 community property trust and providing in the trust that the
 949 property is community property pursuant to this part.

950 (2) A community property trust is enforceable without
 951 consideration.

952 (3) All property owned by a community property trust is
 953 community property under the laws of the state during the
 954 marriage of the settlor spouses.

955 (4) The right to manage and control property that is
 956 transferred to a community property trust is determined by the
 957 terms of the trust agreement.

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958 (5) When property is distributed from a community property
 959 trust, the property shall no longer constitute community
 960 property within the meaning of this part, provided that
 961 community property as classified by a jurisdiction other than
 962 the state retains its character as community property to the
 963 extent otherwise provided by ss. 732.216-732.228.

964 Section 34. Section 736.1506, Florida Statutes, is created
 965 to read:

966 736.1506 Satisfaction of obligations.-Except as provided in
 967 s. 4, Art. X of the State Constitution:

968 (1) An obligation incurred by only one spouse before or
 969 during the marriage may be satisfied from that spouse's one-half
 970 share of a community property trust.

971 (2) An obligation incurred by both spouses during the
 972 marriage may be satisfied from a community property trust of the
 973 settlor spouses.

974 Section 35. Section 736.1507, Florida Statutes, is created
 975 to read:

976 736.1507 Death of a spouse.-Upon the death of a spouse,
 977 one-half of the aggregate value of the property held in a
 978 community property trust established by the settlor spouses
 979 reflects the share of the surviving spouse and is not subject to
 980 testamentary disposition by the decedent spouse or distribution
 981 under the laws of succession of the state. The other one-half of
 982 the value of that property reflects the share of the decedent
 983 spouse and is subject to testamentary disposition or
 984 distribution under the laws of succession of the state. Unless
 985 provided otherwise in the community property trust agreement,
 986 the trustee has the power to distribute assets of the trust in

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987 divided or undivided interests and to adjust resulting
 988 differences in valuation. A distribution in kind may be made on
 989 the basis of a non-pro rata division of the aggregate value of
 990 the trust assets, on the basis of a pro rata division of each
 991 individual asset, or by using both methods. The decedent's
 992 spouse's one-half share shall not be included in the elective
 993 estate.

994 Section 36. Section 736.1508, Florida Statutes, is created
 995 to read:

996 736.1508 Dissolution of marriage.—Upon the dissolution of
 997 the marriage of the settlor spouses, the community property
 998 trust shall terminate and the trustee shall distribute one-half
 999 of the trust assets to each spouse, with each spouse receiving
 1000 one-half of each asset, unless otherwise agreed to in writing by
 1001 both spouses. For purposes of this act, s. 61.075 does not apply
 1002 to the disposition of the assets and liabilities held in a
 1003 community property trust.

1004 Section 37. Section 736.1509, Florida Statutes, is created
 1005 to read:

1006 736.1509 Right of child to support.—A community property
 1007 trust does not adversely affect the right of a child of the
 1008 settlor spouses to support that either spouse would be required
 1009 to give under the applicable laws of the settlor spouses' state
 1010 of domicile.

1011 Section 38. Section 736.151, Florida Statutes, is created
 1012 to read:

1013 736.151 Homestead property.—

1014 (1) Property that is transferred to or acquired subject to
 1015 a community property trust may continue to qualify or may

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1016 initially qualify as the settlor spouses' homestead within the
 1017 meaning of s. 4(a)(1), Art. X of the State Constitution and for
 1018 all purposes of general law, provided that the property would
 1019 qualify as the settlor spouses' homestead if title was held in
 1020 one or both of the settlor spouses' individual names.

1021 (2) The settlor spouses shall be deemed to have beneficial
 1022 title in equity to the homestead property held subject to a
 1023 community property trust for all purposes, including for
 1024 purposes of s. 196.031.

1025 Section 39. Section 736.1511, Florida Statutes, is created
 1026 to read:

1027 736.1511 Application of Internal Revenue Code; community
 1028 property classified by another jurisdiction.—For purposes of the
 1029 application of s. 1014(b)(6) of the Internal Revenue Code of
 1030 1986, 26 U.S.C. s. 1014(b)(6), as of January 1, 2021, a
 1031 community property trust is considered a trust established under
 1032 the community property laws of the state. Community property, as
 1033 classified by a jurisdiction other than this state, which is
 1034 transferred to a community property trust retains its character
 1035 as community property while in the trust. If the trust is
 1036 revoked and property is transferred on revocation of the trust,
 1037 the community property as classified by a jurisdiction other
 1038 than the state retains its character as community property to
 1039 the extent otherwise provided by ss. 732.216-732.228.

1040 Section 40. Section 736.1512, Florida Statutes, is created
 1041 to read:

1042 736.1512 Unenforceable trusts.—

1043 (1) A community property trust executed during marriage is
 1044 not enforceable if the spouse against whom enforcement is sought

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1045 proves that:1046 (a) The trust was unconscionable when made;1047 (b) The spouse against whom enforcement is sought did not
1048 execute the community property trust agreement voluntarily; or1049 (c) Before execution of the community property trust
1050 agreement, the spouse against whom enforcement is sought:1051 1. Was not given a fair and reasonable disclosure of the
1052 property and financial obligations of the other spouse.1053 2. Did not voluntarily sign a written waiver expressly
1054 waiving right to disclosure of the property and financial
1055 obligations of the other spouse beyond the disclosure provided.1056 3. Did not have notice of the property or financial
1057 obligations of the other spouse.1058 (2) Whether a community property trust is unconscionable
1059 shall be determined by a court as a matter of law.1060 (3) A community property trust may not be deemed
1061 unenforceable because the settlor spouses did not have separate
1062 legal representation when executing the trust.1063 Section 41. Paragraph (f) of subsection (5) of section
1064 736.0802, Florida Statutes, is amended to read:

1065 736.0802 Duty of loyalty.—

1066 (5)

1067 (f)1. The trustee of a trust as defined in s. 731.201 may
1068 request authority to invest in investment instruments described
1069 in this subsection other than a qualified investment instrument,
1070 by providing to all qualified beneficiaries a written request
1071 containing the following:1072 a. The name, telephone number, street address, and mailing
1073 address of the trustee and of any individuals who may be

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1074 contacted for further information.

1075 b. A statement that the investment or investments cannot be
1076 made without the consent of a majority of each class of the
1077 qualified beneficiaries.1078 c. A statement that, if a majority of each class of
1079 qualified beneficiaries consent, the trustee will have the right
1080 to make investments in investment instruments, as defined in s.
1081 660.25(6), which are owned or controlled by the trustee or its
1082 affiliate, or from which the trustee or its affiliate receives
1083 compensation for providing services in a capacity other than as
1084 trustee, that such investment instruments may include investment
1085 instruments sold primarily to trust accounts, and that the
1086 trustee or its affiliate may receive fees in addition to the
1087 trustee's compensation for administering the trust.1088 d. A statement that the consent may be withdrawn
1089 prospectively at any time by written notice given by a majority
1090 of any class of the qualified beneficiaries.1091
1092 A statement by the trustee is not delivered if the statement is
1093 accompanied by another written communication other than a
1094 written communication by the trustee that refers only to the
1095 statement.

1096 2. For purposes of paragraph (e) and this paragraph:

1097 a. "Majority of the qualified beneficiaries" means:

1098 (I) If at the time the determination is made there are one
1099 or more beneficiaries as described in s. 736.0103(19)(c) ~~or~~
1100 ~~736.0103(16)(c)~~, at least a majority in interest of the
1101 beneficiaries described in s. 736.0103(19)(a) ~~or~~
1102 ~~736.0103(16)(a)~~, at least a majority in interest of the

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1103 beneficiaries described in s. 736.0103(19)(b) ~~s.~~
 1104 ~~736.0103(16)(b)~~, and at least a majority in interest of the
 1105 beneficiaries described in s. 736.0103(19)(c) ~~s.~~
 1106 ~~736.0103(16)(e)~~, if the interests of the beneficiaries are
 1107 reasonably ascertainable; otherwise, a majority in number of
 1108 each such class; or

1109 (II) If there is no beneficiary as described in s.
 1110 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least a majority in
 1111 interest of the beneficiaries described in s. 736.0103(19)(a) ~~s.~~
 1112 ~~736.0103(16)(a)~~ and at least a majority in interest of the
 1113 beneficiaries described in s. 736.0103(19)(b) ~~s.~~
 1114 ~~736.0103(16)(b)~~, if the interests of the beneficiaries are
 1115 reasonably ascertainable; otherwise, a majority in number of
 1116 each such class.

1117 b. "Qualified investment instrument" means a mutual fund,
 1118 common trust fund, or money market fund described in and
 1119 governed by s. 736.0816(3).

1120 c. An irrevocable trust is created upon execution of the
 1121 trust instrument. If a trust that was revocable when created
 1122 thereafter becomes irrevocable, the irrevocable trust is created
 1123 when the right of revocation terminates.

1124 Section 42. Paragraph (a) of subsection (2) of section
 1125 736.08125, Florida Statutes, is amended to read:
 1126 736.08125 Protection of successor trustees.-
 1127 (2) For the purposes of this section, the term:
 1128 (a) "Eligible beneficiaries" means:
 1129 1. At the time the determination is made, if there are one
 1130 or more beneficiaries as described in s. 736.0103(19)(c) ~~s.~~
 1131 ~~736.0103(16)(e)~~, the beneficiaries described in s.

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1132 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or
 1133 2. If there is no beneficiary as described in s.
 1134 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described
 1135 in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

1136 Section 43. Paragraph (d) of subsection (9) of section
 1137 738.104, Florida Statutes, is amended to read:
 1138 738.104 Trustee's power to adjust.-
 1139 (9)
 1140 (d) For purposes of subsection (8) and this subsection, the
 1141 term:
 1142 1. "Eligible beneficiaries" means:
 1143 a. If at the time the determination is made there are one
 1144 or more beneficiaries described in s. 736.0103(19)(c) ~~s.~~
 1145 ~~736.0103(16)(e)~~, the beneficiaries described in s.
 1146 736.0103(19)(a) and (c) ~~s. 736.0103(16)(a) and (e)~~; or
 1147 b. If there is no beneficiary described in s.
 1148 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, the beneficiaries described
 1149 in s. 736.0103(19)(a) and (b) ~~s. 736.0103(16)(a) and (b)~~.

1150 2. "Super majority of the eligible beneficiaries" means:
 1151 a. If at the time the determination is made there are one
 1152 or more beneficiaries described in s. 736.0103(19)(c) ~~s.~~
 1153 ~~736.0103(16)(e)~~, at least two-thirds in interest of the
 1154 beneficiaries described in s. 736.0103(19)(a) ~~s. 736.0103(16)(a)~~
 1155 or two-thirds in interest of the beneficiaries described in s.
 1156 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, if the interests of the
 1157 beneficiaries are reasonably ascertainable; otherwise, it means
 1158 two-thirds in number of either such class; or
 1159 b. If there is no beneficiary described in s.
 1160 736.0103(19)(c) ~~s. 736.0103(16)(e)~~, at least two-thirds in

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1161 interest of the beneficiaries described in s. 736.0103(19)(a) ~~or~~
 1162 ~~736.0103(16)(a)~~ or two-thirds in interest of the beneficiaries
 1163 described in s. 736.0103(19)(b) ~~s. 736.0103(16)(b)~~, if the
 1164 interests of the beneficiaries are reasonably ascertainable,
 1165 otherwise, two-thirds in number of either such class.

1166 Section 44. Subsection (1) of section 744.3679, Florida
 1167 Statutes, is amended to read:

1168 744.3679 Simplified accounting procedures in certain
 1169 cases.—

1170 (1) In a guardianship of property, when all property assets
 1171 of the estate ~~is are~~ in designated depositories under s. 69.031
 1172 and the only transactions that occur in that account are
 1173 interest accrual, deposits from a settlement, or financial
 1174 institution service charges, the guardian may elect to file an
 1175 accounting consisting of:

1176 (a) The original or a certified copy of the year-end
 1177 statement of the ward's account from the financial institution;
 1178 and

1179 (b) A statement by the guardian under penalty of perjury
 1180 that the guardian has custody and control of the ward's property
 1181 as shown in the year-end statement.

1182 Section 45. The Division of Law Revision is directed to
 1183 replace the phrase "the effective date of this section" wherever
 1184 it occurs in this act with the date those sections become law.

1185 Section 46. If any provision of this act or the application
 1186 thereof to any person or circumstance is held invalid, the
 1187 invalidity does not affect other provisions or applications of
 1188 this act which can be given effect without the invalid provision
 1189 or application, and to this end the provisions of this act are

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1190 severable.

1191 Section 47. Except as otherwise expressly provided in this
 1192 act and except for this section, which shall take effect upon
 1193 this act becoming a law, this act shall take effect July 1,
 1194 2021.

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THE FLORIDA SENATE
APPEARANCE RECORD

3.30.21

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

1076

Meeting Date

Bill Number (if applicable)

283798

Topic

Public Works Projects

Amendment Barcode (if applicable)

Name

Sarah Suskey

Job Title

Address

204 South Monroe Street

Phone

850.222.8900

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Florida Carpenters Regional Council

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21
Meeting Date

SB-1076
Bill Number (if applicable)

Topic PUBLIC WORKS

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone _____

TALLAHASSEE, FL 32303
City State Zip

Email _____

Speaking: For Against Information

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

03/30/21

Meeting Date

1076

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Ken Williams

Job Title _____

Address 7411 Meadow Drive

Phone 813-493-7685

Street

Tampa FL 33634

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

1076

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Director of Government Relations

Address 235 W. Brandon Blvd. Ste. 640

Phone 8509335994

Street

Brandon

City

FL

State

33511

Zip

Email edward@rsaconsultingllc.com

Speaking: For Against Information

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

Representing American Fire Sprinkler Association - FL Chapter

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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001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name Dr. Rick Templin

Job Title _____

Address 135 S. Monroe

Phone 850 - 229 - 6926

Street

Tallahassee

FL

32309

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Fla-ida AFL-CIO

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

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3/30/21
Meeting Date

1076
Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address P.O. Box 10888
Street

Phone 850-228-8940

Tallahassee
City

FL
State

32302
Zip

Email TKing@FBCTC.org

Speaking: For Against Information

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

Representing Florida State Building & Construction Trades

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3-30-21

Meeting Date

1076

Bill Number (if applicable)

Topic PUBLIC WORKS PREREMPTION

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810

Phone 305-979-7110

Street

Miami

City

FL

State

33128

Zip

Email jmm2@miamidade.gov

Speaking: For Against Information

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

Representing Miami-Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/21

Meeting Date

1076

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Ida V. Eskomari

Job Title

Address Street

Phone 4073764801

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3-30-21

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

SB 1076

Meeting Date

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Keri Hebrank

Job Title

Address 215 S. Monroe Street #500

Phone 566-7821

Tallahassee FL 32301

Email Khebrank@carltonfields.com

City State Zip

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

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

Representing National Utility Contractors Assoc. of FL

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/30/2021
Meeting Date

1076
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist - ABC of Florida

Address 3730 Coconut Creek Pkwy, Ste 200

Phone (954) 465-1081

Street

Coconut Creek FL 33010

City State Zip

Email cbowen@abcofl.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2021 Meeting Date

(10710) Bill Number (if applicable)

Topic Public Works Project

801090 Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Parkway, Ste 200 Street

Phone (954) 465-6811

Coconut Creek, FL 33066 City State Zip

Email cbowen@abcaofl.com

Speaking: [] For [] Against [] Information

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

Representing Associated Builders and Contractors of Florida

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-30-21

Meeting Date

SB 1076

Bill Number (if applicable)

8010910

Amendment Barcode (if applicable)

Topic Public Works Projects

Name KARI FEDRANK

Job Title _____

Address 215 S. MONROE ST

Phone 566-7824

Street

TALLAHASSEE FL 32301

City

State

Zip

Email KRFRANK@CAPTON
FIELD.COM

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing NUCA OF FLORIDA, FRMCA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9-30-21

Meeting Date

20 1070

Bill Number (if applicable)

Topic Public Works Projects

203790 AA

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title _____

Address 215 S. MONROE ST

Phone 566-9824

Street

City

Tallahassee FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing NUCA of FLORIDA, FRMCA

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
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 Community Affairs

BILL: CS/CS/SB 1076

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Brodeur

SUBJECT: Public Works Projects

DATE: April 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1076 prohibits a state college, county, municipality, school district, or other political subdivision of the state from imposing certain penalties in competitive solicitations for construction services when any state-appropriated funds are to be used to fund the project.

Current law provides that for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon: (1) the contractor's maintaining an office or place of business within a particular local jurisdiction; (2) the contractor's hiring employees or subcontractors from within a particular local jurisdiction; or (3) the contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill removes the 50 percent or more threshold and applies the prohibition on local preference penalties to all solicitations that will be paid for with funding that is state-appropriated.

The bill amends the definition of the term "public works project" to remove the 50 percent or more cost threshold and to provide that the term applies to activities exceeding \$300,000 in value which are paid for with any state-appropriated funds. Additionally, this definition is amended to remove the limitation to appropriations at the time of the competitive solicitation.

The bill prohibits the state or any political subdivision that contracts for a public works project, except as required by federal or state law, from taking the following actions:

- Imposing a penalty during the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residence of the employees of such contractor, subcontractor, or material supplier or carrier; or
- Requiring a contractor, subcontractor, or material supplier or carrier engaged in a public works project to train employees in designated programs with a restricted curriculum or from a single source.

The bill also prohibits the state or any political subdivision from prohibiting a contractor, subcontractor, or material supplier or carrier who is qualified, licensed, or certified by state or local law – from receiving information about public works opportunities.

The bill provides that these restrictions do not apply to projects funded by the Charter County and Regional Transportation System Surtax.

The bill may have an indeterminate fiscal impact on local governments.

The bill takes effect on July 1, 2021.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., authorizes the Department of Management Services to adopt rules for bidding on building construction contracts. These rules must establish:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.¹

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.² A county, municipality, special district as defined in chapter 189, or other political subdivision seeking to construct or improve a public building must competitively award to an appropriately licensed contractor each project that is estimated to cost more than \$300,000.³

¹ Section 255.29, F.S.; *See* Rule 60D-5.001 et seq., Florida Administrative Code.

² Section 255.0525, F.S.,

³ Section 255.20, F.S.

Section 255.0525(1), F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.⁴ Similar publishing requirements apply to counties, municipalities, and political subdivisions under s. 255.0525(2), F.S.

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by state funds.⁵ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have “substantially equal qualifications”⁶ to those of non-residents.⁷ A contract for construction funded by local funds may contain such a provision but is not required to be included.⁸ A contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor’s employment needs in the state’s job bank system.⁹

Prohibited Local Government Preferences

Section 255.0991, F.S., prohibits a local ordinance or regulation from giving preference to a local contractor in certain circumstances. For a competitive solicitation¹⁰ for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- The contractor’s maintaining an office or place of business within a particular local jurisdiction;
- The contractor’s hiring employees or subcontractors from within a particular local jurisdiction; or
- The contractor’s prior payment of local taxes, assessments, or duties within a particular local jurisdiction.¹¹

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.¹² If less than 50 percent of the costs for the

⁴ Section 255.0525(1), F.S.

⁵ Section 255.099(1), F.S.

⁶ Section 255.099(1)(a), F.S., defines the term “substantially equal qualifications” to mean the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

⁷ Section 255.099(1), F.S.

⁸ *Id.*

⁹ Section 255.099(1)(b), F.S.

¹⁰ Section 255.248(2), F.S., defines “competitive solicitation” to mean an invitation to bid, a request for proposals, or an invitation to negotiate.

¹¹ Section 255.0991(2), F.S.

¹² Section 255.0991(3), F.S.

construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.¹³

Public Works Projects

In 2017, the Legislature created s. 255.0992, F.S., addressing limitations with respect to public works contracts - except for contracts issued by the Department of Transportation (DOT) under ch. 337, F.S.¹⁴ This section defines the terms “political subdivision” and “public works project.” A political subdivision is defined to mean:

[A] separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

The term “public works project” means:

[A]n activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.¹⁵

The state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a

¹³ Section 255.0991(4), F.S.

¹⁴ Chapter 2017-113, L.O.F.

¹⁵ Section 255.0992(2)(a), F.S.

bid on the public works project.¹⁶ This provision does not apply to vendors listed on the convicted and discriminatory vendor list.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935¹⁷ and the Labor Management Relations Act of 1947¹⁸ constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.¹⁹ A state may set the rate higher than the federal minimum, but not lower.²⁰ The act also requires employers to pay time and a half to their employees for overtime hours worked,²¹ and establishes standards for recordkeeping²² and child labor.²³ Over 135 million workers are covered under the act;²⁴ most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered “exempt” from the FLSA overtime requirements.²⁵

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.²⁶ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”²⁷ The

¹⁶ Section 255.099(2)(b), F.S.

¹⁷ 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

¹⁸ 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

¹⁹ 29 U.S.C. s. 206 .

²⁰ 29 U.S.C. s. 218(a).

²¹ 29 U.S.C. s. 207(a)(1).

²² 29 U.S.C. s. 211.

²³ 29 U.S.C. s. 212.

²⁴ United States Department of Labor, *Wage and Hour Division: Resources for Workers*, available at <http://www.dol.gov/whd/workers.htm> (last visited February 22, 2021).

²⁵ 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited February 22, 2021).

²⁶ 30 Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited February 22, 2021).

²⁷ *Id.*

Executive Order hourly minimum wage in effect from January 1, 2021, through December 31, 2021, is \$10.95.²⁸

The Davis-Bacon Act²⁹ applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.³⁰ Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.³¹ The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.³² Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon “related Acts.”³³ The “related Acts” include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.³⁴

State Labor and Wage Regulations

The State Constitution protects the right for workers to collectively bargain, including public sector employees.³⁵ It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.³⁶

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”³⁷ Employers must

²⁸ 85 Fed. Reg. 53850 (August 31, 2020), available at <https://www.federalregister.gov/documents/2020/08/31/2020-19037/establishing-a-minimum-wage-for-contractors-notice-of-rate-change-in-effect-as-of-january-1-2021> (last visited February 22, 2021).

²⁹ Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

³⁰ United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, available at <http://www.dol.gov/whd/govcontracts/dbra.htm> (last visited February 24, 2021).

³¹ *Id.*

³² *Id.*

³³ United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, <http://www.dol.gov/whd/regs/compliance/whdfs66.pdf> (last visited February 24, 2021). Examples of “related Acts” are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

³⁴ *Id.*

³⁵ Art. I, s. 6, FLA. CONST.

³⁶ See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

³⁷ Art. X, s. 24(a), FLA. CONST.

pay employees no less than the minimum wage for all hours worked in Florida.³⁸ The current state minimum wage is \$8.65 per hour,³⁹ which is higher than the federal rate.⁴⁰

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by DOT. Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.⁴¹ Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.⁴² The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders “with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification.”⁴³

Home Rule

Counties

A county without a charter has such power of self-government as provided by general⁴⁴ or special law, and may enact county ordinances not inconsistent with general law.⁴⁵ Counties operating under county charters have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.⁴⁶ General law authorizes counties “the power to carry on county government”⁴⁷ and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”⁴⁸

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁴⁹ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.⁵⁰ Chapter 166, F.S.,

³⁸ Art. X, s. 24(c), FLA. CONST.

³⁹ Department of Economic Opportunity, *Display Posters and Required Notices*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/poster-fl-minimum-wage-2021-english.pdf?sfvrsn=74a4bb0_2 (last visited February 2, 2021).

⁴⁰ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited February 24, 2021).

⁴¹ Section 337.14(1), F.S.

⁴² Section 337.14(2), F.S.

⁴³ Section 337.14(1), F.S.

⁴⁴ Chapter 125, Part I, F.S.

⁴⁵ FLA. CONST. art. VIII, s. 1(f).

⁴⁶ FLA. CONST. art. VIII, s. 1(g).

⁴⁷ Section 125.01(1), F.S.

⁴⁸ Section 125.01(1)(w), F.S.

⁴⁹ Section 166.011, F.S.

⁵⁰ Florida House of Representatives, Publications, *The Local Government Formation Manual 2018-2020*, p. 16, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2020&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual.pdf>.

provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.⁵¹

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. Where state preemption applies, it precludes a local government from exercising authority in that particular area.⁵² Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁵³ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁵⁴ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.^{55,56}

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁵⁷ Implied preemption is actually a decision by a court to create preemption in the absence of an explicit legislative directive.⁵⁸ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.⁵⁹ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.⁶⁰

Charter County and Regional Transportation System Surtax

Any county that has adopted a home rule charter, any county government that has consolidated with one or more municipalities, and any county that is within or under an interlocal agreement with a regional transportation or transit authority created under ch. 343 or 349, F.S., may levy a transportation system sales surtax at a rate of up to 1 percent, subject to approval by a majority

⁵¹ Section 166.021(4), F.S.

⁵² Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

⁵³ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

⁵⁴ *Mulligan*, 934 So.2d at 1243.

⁵⁵ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

⁵⁶ Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

⁵⁷ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

⁵⁸ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

⁵⁹ *Id.*

⁶⁰ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

vote of the county's electorate or a charter amendment approved by a majority vote of the county's electorate.⁶¹

Based on these criteria, 31 counties are eligible to levy the surtax, and, only two of the 31 eligible counties (Duval and Miami-Dade) levy this surtax, each at a rate of 0.5 percent.

Generally, the surtax proceeds are used for the development, construction, operation, and maintenance of fixed guideway rapid transit systems; bus systems; on-demand transportation services; and roads and bridges.⁶² Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.⁶³

The Charter County and Regional Transportation System Surtax is estimated to produce \$554.8 million in Fiscal Year 2020-2021.⁶⁴

III. Effect of Proposed Changes:

Section 1 amends s. 255.0991, F.S., to remove the 50 percent or more state-appropriated funding threshold for competitive solicitations for construction services and thus prohibit certain location-based penalties to solicitations that will be paid for with funding that is state-appropriated.

Section 2 amends s. 255.0992, F.S., to modify the definition of the term “public works project” to remove the 50 percent or more cost threshold and provide that the term applies to activities valued over \$300,000 and paid for with any state-appropriated funds. Additionally, this definition is amended to remove the limitation to appropriations at the time of the competitive solicitation.

This section prohibits the state or any political subdivision that contracts for public works projects, except as required by federal or state law, from taking the following actions:

- Imposing a penalty during the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residence of the employees of such contractor, subcontractor, or material supplier or carrier; or
- Requiring a contractor, subcontractor, or material supplier or carrier engaged in a public works project to train employees in designated programs with a restricted curriculum or from a single source.

This section prohibits the state or any political subdivision from prohibiting a contractor, subcontractor, or material supplier or carrier who is qualified, licensed, or certified – by state or local law – from receiving information about public works opportunities.

⁶¹ Section 212.055(1), F.S. *See also* Florida Revenue Estimating Conference, *2020 Florida Tax Handbook*, p. 233, available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited April 1, 2021).

⁶² Section 212.055(1)(d), F.S.

⁶³ Section 212.055(1)(d)3., F.S.

⁶⁴ *See supra* note 61.

Additionally, this section provides that these restrictions do not apply to projects funded by the Charter County and Regional Transportation System Surtax.

Section 3 provides that the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of 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:

The bill may have a positive indeterminate impact to the extent fewer contractors, subcontractors, or material suppliers or carriers will no longer be required to meet certain pre-bid requirements.

C. Government Sector Impact:

The bill will have an indeterminate fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 255.0991 and 255.0992 of the Florida Statutes.

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

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

CS/CS by Community Affairs on March 30, 2021:

The underlying bill prohibited local governments from providing certain preferences in competitive solicitations. The CS reframes this provision to prohibit a local government from imposing certain penalties during the bidding process based on the same factors.

The CS also provides that the provisions of the bill do not apply to projects valued at \$300,000 or less, those projects wholly funded with locally-appropriated funds, or projects funded by the Charter County and Regional Transportation System Surtax.

CS by Governmental Oversight and Accountability on March 10, 2021:

The CS removes unnecessary language and provides that specified entities may offer incentives or award point preferences – except as otherwise prohibited - to a contractor in the bidding process so long as acceptance of any such incentive or preference does not impose any fine, penalty, or other sanction on a contractor.

B. Amendments:

None.



801090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 97

and insert:

Section 1. Subsection (2) of section 255.0991, Florida Statutes, is amended to read:

255.0991 Contracts for construction services; prohibited local government preferences.—

(2) For any a competitive solicitation for construction services paid for with ~~in which 50 percent or more of the cost~~



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11 ~~will be paid from~~ state-appropriated funds ~~which have been~~
12 ~~appropriated at the time of the competitive solicitation,~~ a
13 state college, county, municipality, school district, or other
14 political subdivision of the state may not use a local ordinance
15 or regulation that imposes a penalty ~~provides a preference~~ based
16 upon:

17 (a) The contractor's maintaining an office or place of
18 business within a particular local jurisdiction;

19 (b) The contractor's hiring employees or subcontractors
20 from within a particular local jurisdiction; or

21 (c) The contractor's prior payment of local taxes,
22 assessments, or duties within a particular local jurisdiction.

23 Section 2. Paragraph (b) of subsection (1) and subsection
24 (2) of section 255.0992, Florida Statutes, are amended to read:

25 255.0992 Public works projects; prohibited governmental
26 actions.-

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

28 (b) "Public works project" means an activity exceeding
29 \$300,000 in value which is of which 50 percent or more of the
30 ~~cost will be paid for with any from~~ state-appropriated funds
31 ~~that were appropriated at the time of the competitive~~
32 ~~solicitation~~ and which consists of the construction,
33 maintenance, repair, renovation, remodeling, or improvement of a
34 building, road, street, sewer, storm drain, water system, site
35 development, irrigation system, reclamation project, gas or
36 electrical distribution system, gas or electrical substation, or
37 other facility, project, or portion thereof that is owned in
38 whole or in part by any political subdivision.

39 (2) ~~(a)~~ Except as required by federal or state law, the



801090

40 state or any political subdivision that contracts for a public
41 works project may not take the following actions:

42 (a) Impose a penalty during the bidding process based on
43 the geographic location of the company headquarters or offices
44 of the contractor, subcontractor, or material supplier or
45 carrier submitting a bid on a public works project or the
46 residences of employees of such contractor, subcontractor, or
47 material supplier or carrier.

48 (b) Require that a contractor, subcontractor, or material
49 supplier or carrier engaged in a public works ~~such~~ project:

50 1. Pay employees a predetermined amount of wages or
51 prescribe any wage rate;

52 2. Provide employees a specified type, amount, or rate of
53 employee benefits;

54 3. Control, limit, or expand staffing; ~~or~~

55 4. Recruit, ~~train,~~ or hire employees from a designated,
56 restricted, or single source; or

57 5. Train employees in designated programs with a restricted
58 curriculum or from a single source.

59 (c) ~~(b)~~ The state or any political subdivision that
60 contracts for a public works project may not Prohibit any
61 contractor, subcontractor, or material supplier or carrier able
62 to perform such work which ~~who~~ is qualified, licensed, or
63 certified as required by state or local law to perform such work
64 from receiving information about public works opportunities or
65 from submitting a bid on the public works project. This
66 paragraph does not apply to vendors listed under ss. 287.133 and
67 287.134.

68



801090

69 This section does not apply to a program authorized by s.
70 212.055(1) which is approved by a majority vote of the
71 electorate of the county or by a charter amendment approved by a
72 majority vote of the electorate of the county.

73

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

75 And the title is amended as follows:

76 Delete lines 5 - 12

77 and insert:

78 state-appropriated funds; amending s. 255.0992, F.S.;

79 revising the definition of the term "public works

80 project"; prohibiting the state or any political

81 subdivision that contracts for a public works project

82 from taking specified action against certain entities

83 that are engaged in a public works project or have

84 submitted a bid for such a project; providing

85 applicability;



283798

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hooper) recommended the following:

Senate Amendment to Amendment (801090) (with directory amendment)

Delete lines 43 - 72
and insert:

a geographic location within five contiguous counties of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier.



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11 **(b)** Require that a contractor, subcontractor, or material
12 supplier or carrier engaged in a public works ~~such~~ project:

13 1. Pay employees a predetermined amount of wages or
14 prescribe any wage rate;

15 2. Provide employees a specified type, amount, or rate of
16 employee benefits;

17 3. Control, limit, or expand staffing; ~~or~~

18 4. Recruit, ~~train,~~ or hire employees from a designated,
19 restricted, or single source; or

20 5. Train employees in designated programs with a restricted
21 curriculum or from a single source.

22 **(c)** ~~(b) The state or any political subdivision that~~
23 ~~contracts for a public works project may not~~ Prohibit any
24 contractor, subcontractor, or material supplier or carrier able
25 to perform such work that ~~who~~ is qualified, licensed, or
26 certified as required by state or local law to perform such work
27 from receiving information about public works opportunities or
28 from submitting a bid on the public works project. This
29 paragraph does not apply to vendors listed under ss. 287.133 and
30 287.134.

31 **(3) (a)** Any local law, ordinance, or regulation adopted on
32 or before July 1, 2000, must remain in effect until July 1,
33 2023.

34 **(b)** Any local law, ordinance, or regulation adopted on or
35 between July 2, 2000, and July 1, 2010, must remain in effect
36 until July 1, 2024.

37 **(c)** Any local law, ordinance, or regulation adopted on or
38 between July 2, 2010, and July 1, 2021, must remain in effect
39 until July 1, 2025.



283798

40 (4)~~(3)~~ This section does not apply to contracts executed
41 under chapter 337.

42

43 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

44 And the directory clause is amended as follows:

45 Delete lines 23 - 24

46 and insert:

47 Section 2. Present subsection (3) of section 255.0992,
48 Florida Statutes, is redesignated as subsection (4), a new
49 subsection (3) is added to that section, and paragraph (b) of
50 subsection (1) and subsection (2) are amended, to read:

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

585-02679-21

20211076c1

1 A bill to be entitled
2 An act relating to public works projects; amending s.
3 255.0991, F.S.; revising a prohibition relating to any
4 solicitation for construction services paid for with
5 state or locally appropriated funds; providing
6 construction; amending s. 255.0992, F.S.; revising the
7 definition of the term "public works project";
8 prohibiting the state or any political subdivision
9 that contracts for a public works project from taking
10 specified action against certain persons that are
11 engaged in a public works project or have submitted a
12 bid for such a project; providing construction;
13 providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsections (2) and (4) of section 255.0991,
18 Florida Statutes, are amended to read:
19 255.0991 Contracts for construction services; prohibited
20 local government preferences.-
21 (2) For any a competitive solicitation for construction
22 services paid for with funding that is state-appropriated or
23 locally appropriated in which 50 percent or more of the cost
24 will be paid from state-appropriated funds which have been
25 appropriated at the time of the competitive solicitation, a
26 state college, county, municipality, school district, or other
27 political subdivision of the state may not use a local ordinance
28 or regulation that provides a preference based upon:
29 (a) The contractor's maintaining an office or place of

Page 1 of 4

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

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30 business within a particular local jurisdiction;
31 (b) The contractor's hiring employees or subcontractors
32 from within a particular local jurisdiction; or
33 (c) The contractor's prior payment of local taxes,
34 assessments, or duties within a particular local jurisdiction.
35 (4) Except as provided in subsection (2), this section does
36 not prevent a state college, county, municipality, school
37 district, or other political subdivision of the state from:
38 (a) Awarding a contract to a contractor in accordance with
39 applicable state laws or local ordinances or regulations; or
40 (b) Offering any incentive or awarding any point preference
41 to a contractor in the bidding process for a contract for
42 construction services, so long as acceptance of any such
43 incentive or preference does not impose any fine, penalty, or
44 other sanction on a contractor.
45 Section 2. Paragraph (b) of subsection (1) and subsections
46 (2) and (3) of section 255.0992, Florida Statutes, are amended
47 to read:
48 255.0992 Public works projects; prohibited governmental
49 actions.-
50 (1) As used in this section, the term:
51 (b) "Public works project" means an activity ~~of which 50~~
52 ~~percent or more of the cost will be paid~~ for with ~~from~~ state-
53 ~~appropriated or locally appropriated funds that were~~
54 ~~appropriated at the time of the competitive solicitation~~ and
55 which consists of the construction, maintenance, repair,
56 renovation, remodeling, or improvement of a building, road,
57 street, sewer, storm drain, water system, site development,
58 irrigation system, reclamation project, gas or electrical

Page 2 of 4

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

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59 distribution system, gas or electrical substation, or other
60 facility, project, or portion thereof that is owned in whole or
61 in part by any political subdivision.

62 (2) ~~(a)~~ Except as required by federal or state law, the
63 state or any political subdivision that contracts for a public
64 works project may not take the following actions:

65 (a) Grant a preference or impose a penalty during the
66 bidding process based on the geographic location of the company
67 headquarters or offices of the contractor, subcontractor, or
68 material supplier or carrier submitting a bid on a public works
69 project or the residences of employees of such contractor,
70 subcontractor, or material supplier or carrier.

71 (b) Require that a contractor, subcontractor, or material
72 supplier or carrier engaged in a public works ~~such~~ project:

73 1. Pay employees a predetermined amount of wages or
74 prescribe any wage rate;

75 2. Provide employees a specified type, amount, or rate of
76 employee benefits;

77 3. Control, limit, or expand staffing; ~~or~~

78 4. Recruit, ~~train,~~ or hire employees from a designated,
79 restricted, or single source; or

80 5. Train employees in designated programs with a restricted
81 curriculum or from a single source.

82 ~~(c)(b) The state or any political subdivision that~~
83 ~~contracts for a public works project may not~~ Prohibit any
84 contractor, subcontractor, or material supplier or carrier able
85 to perform such work that who is qualified, licensed, or
86 certified as required by state or local law to perform such work
87 from receiving information about public works opportunities or

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88 from submitting a bid on the public works project. This
89 paragraph does not apply to vendors listed under ss. 287.133 and
90 287.134.

91 (3) This section does not:

92 (a) Apply to contracts executed under chapter 337; or

93 (b) Prevent the state or a political subdivision from
94 offering any incentive or awarding any point preference in the
95 bidding process which are not prohibited under this section so
96 long as acceptance of any such incentive or preference does not
97 impose a fine, a penalty, or another sanction on the bidder.

98 Section 3. This act shall take effect July 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-30-21

Meeting Date

2B 1146

Bill Number (if applicable)

967590

Amendment Barcode (if applicable)

Topic FLORIDA BUILDING CODE

Name KARE HEBBANK

Job Title _____

Address 215 S. MONROE ST

Phone 506-7824

Street TALLAHASSEE FL 32301

Email _____

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

3-30-21

Meeting Date

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

SB 1146

Bill Number (if applicable)

Topic FLORIDA BUILDING CODE

Amendment Barcode (if applicable)

Name KARI HEDRASK

Job Title _____

Address 215 S. MONROE ST.

Phone 566-7824

Street TALLAHASSEE FL 32301

Email _____

City State Zip

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/30/21

Meeting Date

1146

Bill Number (if applicable)

Topic Florida Building Code

Amendment Barcode (if applicable)

Name Chris Dawson

Job Title Attorney

Address 301 E Pine Street, Suite 1400

Phone 407 843 8880

Street

Orlando

City

FL

State

32801

Zip

Email Chris.Dawson@gray-robinson.com

Speaking: For Against Information

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

Representing FL Roofing & Sheet Metal Contractors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION

BILL NUMBER:	<u>HB 459</u>
BILL TITLE:	<u>Building Design</u>
BILL SPONSOR:	<u>Rep. Overdorf</u>
EFFECTIVE DATE:	<u>7/01/2020</u>

COMMITTEES OF REFERENCE

1) N/A
2) Click or tap here to enter text.
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	November 6, 2019
LEAD AGENCY ANALYST:	Thomas Campbell, Executive Director, Florida Building Commission
ADDITIONAL ANALYST(S):	W. Justin Vogel, FBC Counsel Thomas Izzo, OGC Rules Tom Coker, Technology Tracy Dixon, Service Operations
LEGAL ANALYST:	Tom Thomas, OGC

FISCAL ANALYST:	Raleigh Close, Administration
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POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill gives authority to the Florida Building Commission (Commission) to review local regulations to determine if the local regulation is a technical amendment to the Florida Building Code. If the Commission determines that the regulation is a technical amendment to the Florida Building Code the regulation is not effective or enforceable until it is adopted in accordance with the requirements of s. 553.73(4), F.S.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 163.3202, F.S., provides that after the adoption of a comprehensive plan local governments must adopt local land use regulations. The adopted local land use regulations must also comply with the requirements of s. 163.3202, F.S.

Section 553.73(4), F.S., outlines the process local governments must follow to adopt local amendments to the Florida Building Code.

Section 125.01(1)(bb), F.S., gives the legislative and governing body of a county the authority to enforce the Florida Building Code and make local technical amendments to the Florida Building Code.

Section 125.56(1), F.S., provides that each board of county commissioners has the authority to adopt local technical amendments to the Florida Building Code and Florida Fire Protection Code.

2. EFFECT OF THE BILL:

The bill creates s. 163.3202(5), F.S., which provides that zoning and development regulations may not be applied to the "building design elements" of one or two family dwellings unless one of the following applies:

- The structure is listed in the National Register of Historic Places;
- The regulations are adopted in order to implement requirements of the National Flood Insurance Program.

The term "building design element" means the external color of the structure, the type of cladding used on the structure, the style or material of the structure's roof, the style or material of the structure's porch, the exterior nonstructural architectural ornamentation of the structure, and the architectural styling of a structure's windows or doors.

The bill creates s. 553.73(4)(l), F.S., which states that any substantially affected party may submit to the Florida Building Commission any local government regulation, law, ordinance, policy, land use provision, or zoning provision for a determination as to whether it constitutes a technical amendment to the Florida Building Code. If the Commission determines the regulation is a technical amendment to the Florida Building Code the regulation is not effective or enforceable until it is adopted in accordance with the local technical amendment adoption process outlined in s. 553.73(4), F.S.

The bill makes various editorial and clarifying changes to ss. 125.01, F.S., 125.56(1) and 553.73(4), F.S.

The effective date of the bill is July 1, 2020.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>

Rule(s) impacted (provide references to F.A.C., etc.):	N/A
--	-----

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	N/A
Opponents and summary of position:	N/A

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y N

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y N

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?Y N

Revenues:	N/A
Expenditures:	Indeterminate. Local governments could see increased legal challenges to zoning and other regulations based on the bill.
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y N

Revenues:	No
Expenditures:	Possible minimal. See Additional Comments section.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y N

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y N

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	ISF Inc., the technology vendor for the Building Code Information System ("BCIS") will need to add additional functionality to the BCIS to allow affected parties to submit regulations for review by the Commission. This additional work can be handled using the existing contract with ISF Inc., and should not require additional funding.
--	---

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	N/A
--	-----

ADDITIONAL COMMENTS

Florida Building Commission-In line 61 the term "subsection" should probably be changed to either "section" or "part" since subsection 553.73(4), F.S., does not contain any minimum standards to exceed. The language in the statute is likely referring to the minimum standards of the Florida Building Code. The Florida Building Code is referenced in s. 553.73, F.S., and more generally in part IV of ch. 553, F.S.

OGC Rules: No additional comments.

Division of Service Operations: No impact.

Fiscal Comment: The Florida Building Commission may see an increase in workload if the new process detailed in s. 553.73(4)(l), F.S., is used frequently. However, this additional workload can likely be handled using existing resources and should not lead to any substantial cost impacts on the Commission or the Department of Business and Professional Regulation.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	OGC: No additional comments.
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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 Community Affairs

BILL: CS/SB 1146

INTRODUCER: Community Affairs Committee and Senator Brodeur

SUBJECT: Florida Building Code

DATE: April 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.			AP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1146 amends the Florida Building Codes Act adding several new provisions. Specifically, the bill:

- Allows a substantially affected person to petition the Florida Building Commission (Commission) for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Florida Building Code (Building Code), and establishes a process for such.
- Allows the Commission to issue an “errata to the code” to correct demonstrated errors in provisions contained within the Building Code.
- Requires the Commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.
- Expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

The bill also allows the owner of an onsite sewage treatment and disposal system, or the owner’s contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health.

Finally, the bill prohibits the Department of Health from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.

The bill provides for an effective date of July 1, 2021.

II. Present Situation:

The Florida Building Code and Florida Building Commission

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Building Code.³

Part IV of ch. 553, 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.⁴

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.⁵

The Florida Building Commission

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).

² *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited on Feb. 15, 2021).

³ Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> (last visited Feb.. 26, 2021).

⁴ See section 553.72(1), F.S.

⁵ Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).

professionals, contractors, and government experts in various disciplines covered by the Building Code.⁶

The Commission reviews several International Codes published by the International Code Council, 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.⁷

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.⁸ TACs are made up of commission members and other parties who advise the Commission on declaratory statements, proposed amendments, and any other areas of interest of the Commission.⁹

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.¹⁰

Every local government must enforce the Building Code and issue building permits.¹¹ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons that may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.¹²

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.¹³ A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.¹⁴

Amendments to the Building Code

The Commission and local governments may adopt technical and administrative amendments to the Building Code. A technical amendment to the Building Code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the Building Code.¹⁵ All amendments adopted by the Commission require a 75% supermajority vote of approval.¹⁶

⁶ Sections 553.73, & 553.74, F.S.

⁷ *Id.*

⁸ DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Feb. 26, 2021).

⁹ Section 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.

¹⁰ Section 553.72, F.S.

¹¹ Sections 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

¹² *See* Sections 125.56(4)(a) & 553.79(1), F.S.

¹³ Section 202 of the Building Code (Building), Sixth Edition.

¹⁴ Section 468.603(2), F.S.

¹⁵ Section 553.73, F.S.; Rule 61G20-2.002, F.A.C.

¹⁶ Rule 61G20-2.002(13), F.A.C.

The Commission may approve technical amendments to the Building Code once each year for statewide or regional application upon a finding that the amendment:¹⁷

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the Building Code.

In order to adopt a technical amendment to the Building Code the Commission must meet the following requirements:¹⁸

- The proposed amendment has been published on the Commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment;
- In order for a TAC to make a favorable recommendation to the Commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the Commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the Commission based on public testimony and evidence from a public hearing held in accordance with ch. 120, F.S.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the Building Code so that the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.¹⁹

However, for certain amendments the commission may adopt amendments at any time and only has to follow the rule adopting procedures in ch. 120, F.S. The Commission may adopt amendments using the rule adoption procedure to address the following:²⁰

- Conflicts within the updated code;
- Conflicts between the updated code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;

¹⁷ Section 553.73(9), F.S.

¹⁸ Section 553.73(3) and (9), F.S.:

¹⁹ Section 553.73(7), F.S.

²⁰ Section 553.73(8), F.S.; Rule 61G20-2.002(2), F.A.C.

- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

Local Amendments to the Building Code

Local governments may adopt amendments to the Building Code that are more stringent than the Building Code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the Building Code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the Building Code.²¹

Current law allows local governments to adopt technical amendments to the Building Code every six months if:²²

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the Building Code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the Building Code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the Commission.

A technical amendment adopted by a local government takes effect 30 days after the Commission receives the amendment and publishes the amendment on its website.²³

The Commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the Commission decides to review a local amendment it must send the amendment to the applicable TAC for review.²⁴

The TAC must then make a recommendation to the Commission about whether the local amendment complies with the requirements of current law. The Commission must provide the

²¹ Section 553.73(4), F.S.

²² *Id.*

²³ Section 553.73(4), F.S.; Rule-61G20-2.003, F.A.C.

²⁴ *Id.*

nonbinding recommendation to the local government within 30 days of adopting the recommendation.²⁵

Each county and municipality that adopts technical amendments to the Building Code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.²⁶

A local government or the substantially affected party may appeal the compliance review board's decision to the Commission within 14 days of the board's decision. The Commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.²⁷

The Commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the Commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.²⁸

Interpretations of the Building Code

The Commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the Building Code, and give binding interpretations of the Building Code.²⁹

A substantially affected person, state agency, or a local government may petition the Commission in writing for a declaratory statement relating to interpretations of the Building Code, or the enforcement or administration of the Building Code by local governments. The Commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition. Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.³⁰

A substantially affected person may also petition the Commission to review a local building official's interpretation of the Building Code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.³¹

A substantially affected person may petition the Commission to review a local building official's interpretation of the Building Code if:³²

²⁵ *Id.*

²⁶ Section 553.73(4), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 553.775, F.S.

³⁰ Sections 553.775(3), 120.565, & 120.68, F.S.

³¹ Section 553.775(3), F.S.

³² *Id.*

- The substantially affected person has appealed the building official’s interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the Commission on a form adopted by the Commission which contains:
 - The name and address of the local government and the local building official;
 - The name, address, and phone number of the substantially affected person, and an explanation of how they are substantially affected by the building official’s interpretation;
 - A statement of the provisions of the Building Code that are being interpreted, the building official’s interpretation of those sections, and the substantially affected person’s interpretation of those sections; and
 - The local building official’s response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official’s interpretation of the Building Code, the Commission must provide copies to a panel, and publish the petition and the local building official’s response on the Commission’s website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The Commission must coordinate with the Building Officials Association of Florida³³ to designate the panel.³⁴

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official’s response, and any comments posted on the Commission’s website. The panel must issue a determination within 21 days of the petition being filed with the Commission. The determination is binding upon all parties and all jurisdictions in Florida.³⁵ The determination must be published on the Commission’s website and the Florida Administrative Register.³⁶

A party may appeal the panel’s determination by filing an appeal with the Commission within 30 days of the panel’s determination. The Commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel’s determination. The Commission’s ruling is subject to judicial review by a district court of appeal.³⁷

³³ The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, <https://boaf.net/page/About> (last visited Jan. 8, 2020).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida Administrative Code & Florida Administrative Register, *FL Rules FAQ*, <https://www.flrules.org/Help/newHelp.asp#FAW> (last visited Jan. 15, 2020).

³⁷ Sections 553.775(3) & 120.68, F.S.

Product Evaluation and Approval

Current law requires the Commission to develop and implement an approval of products for statewide use. The Commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.³⁸ The Commission approves the products in several categories for statewide use.³⁹

To obtain state approval, a manufacturer must demonstrate that a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
 - The National Evaluation Service;
 - The International Association of Plumbing and Mechanical Officials Evaluation Service;
 - The International Code Council Evaluation Services;
 - Underwriters Laboratories, LLC;
 - The International Conference of Building Officials;
 - SBCCI Public Safety Testing and Evaluation Services, Inc.;
 - Intertek Testing Services NA, Inc.; or
 - The Miami-Dade County Building Code Compliance Office Product Control Division.⁴⁰

Currently, the Commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the Commission's rules.⁴¹ However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

Required Information in Building Permit Application

To obtain a permit, an applicant must complete an application for the proposed work on a form furnished by the government entity. The form must include the following information:⁴²

- The name and address of the owner of the property;
- The name and address of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description; and
- The name and address of the bonding company, if any;
- The name and address of the architect/engineer, if any;

³⁸ Section 553.842(1), F.S.; Rule 61G20-3.001, F.A.C.

³⁹ Rule 61G20-3.001, F.A.C. The categories considered by this rule are panel walls, exterior doors, roofing products, skylights, windows, shutters, structural components, and impact protective systems.

⁴⁰ Section 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 29, 2021).

⁴¹ Rule 61G20-3.008, F.A.C.

⁴² Section 713.135(5) and (6), F.S.

- The name and address of the mortgage company, if any; and
- The number or identifying symbol assigned to the building permit by the issuing authority.

In addition to the information that must be in the application, a government entity may require any additional information be included in the application.⁴³

Private Providers

Any construction work that requires a building permit also requires plans and inspections by a local building official to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to required inspections, a local building official may require other inspections of any work to ensure it complies with the Building Code.⁴⁴

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed Building Code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform Building Code inspections as long as the plans approval and inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may not audit a private provider more than four times in a month unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.⁴⁵

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.⁴⁶ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment

⁴³ *Id.*

⁴⁴ Sections 107, 110.1, and 110.3, Sixth edition of the Florida Building Code.

⁴⁵ Section 553.791(1), (13), and (18), F.S.

⁴⁶ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 31, 2021); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Mar. 31, 2021) (showing the graphic provided in the analysis).

where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.⁴⁷

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.⁴⁸ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁴⁹ For example, in rural areas and low-density developments, central sewer systems are not cost-effective.

Permitting and official inspection of OSTDSs is administered by the Environmental Health Section of the DOH in each county.⁵⁰ The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.⁵¹ Much like other construction projects, installation, repair, alteration, modification, abandonment and replacement of OSTDSs requires a permit.⁵² Before an OSTDS is covered with earth, put into service, or repaired, the county DOH must inspect the system for compliance with statutory requirements and DOH rules.⁵³

Assisted Living Facilities

An assisted living facility is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.⁵⁴ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.⁵⁵ Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.⁵⁶

Assisted living facilities are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., rule 59A-36, F.A.C. In addition to a standard license, an assisted living facility may have one or more specialty licenses that allow the assisted living facility to provide additional care. These specialty

⁴⁷ *Id.*

⁴⁸ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 24, 2021).

⁴⁹ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.

⁵⁰ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 31, 2021).

⁵¹ *Id.*

⁵² Fla. Admin. Code R. 64E-6.003(1).

⁵³ Fla. Admin. Code R. 64E-6.003.

⁵⁴ Section 429.02(5), F.S. An assisted living facility does not include an adult family-care home or a non-transient public lodging establishment.

⁵⁵ Section 429.02(16), F.S.

⁵⁶ Section 429.02(1), F.S.

licenses include limited nursing services,⁵⁷ limited mental health services, and extended congregate care services.⁵⁸

Current law requires rules governing assisted living facilities to promote a safe and sanitary environment that is residential and non-institutional in design or nature.⁵⁹ Current law also requires that rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires AHCA to develop key quality-of-care standards for assisted living facilities with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.⁶⁰ Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.⁶¹

Public Pools

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or is reasonably expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. DOH is authorized to establish a schedule of fees for plan approval and permitting.⁶² Operating permits must be renewed annually and may be transferred from one name or owner to another.⁶³

A public swimming pool includes “a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, **group home facilities for eight or more clients**, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.”⁶⁴

All public pools must be equipped with the following safety features:⁶⁵

⁵⁷ Section 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.).

⁵⁸ Section 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an assisted living facility. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.

⁵⁹ Section 429.41(1), F.S.

⁶⁰ Section 429.41(5), F.S. AHCA reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).

⁶¹ Section 429.41(1)(f), F.S.

⁶² Section 514.033, F.S.

⁶³ Section 514.031(2) and (3), F.S.

⁶⁴ *Id.*

⁶⁵ Rule 64E-9.008(3) and (7), F.A.C.

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;⁶⁶
- A shepherd’s hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd’s hook on each of the longer sides of the pool⁶⁷;
- At least one 18 inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

Lifeguards

A “lifeguard” is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.⁶⁸

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.⁶⁹

Pools in Assisted Living Facilities

Current law gives DOH the authority to adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities.⁷⁰ DOH’s rules require a group care facility, with a pool, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course by the American Red Cross, Y.M.C.A., or other approved aquatic training program.⁷¹

Group care facilities include public or private schools, **assisted living facilities**, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, home for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, or boarding schools.⁷²

On July 6, 2018, DOH opened up its rules relating to group care facilities, including the rule relating to pools in group care facilities, in order to update the rules by incorporating technical changes for consistency with changes in industry standards, reduce surplus language, and increase clarity. On March 11, 2020, the DOH held a workshop to receive comments on the

⁶⁶ Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. § 106.

⁶⁷ Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd’s hook and lifesaving ring requirement. *Id.*

⁶⁸ Section 514.071, F.S.; Rule 64E-9.008(2), F.A.C.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Rule 64E-12.011(3), F.A.C.

⁷² Section 381.006(16), F.S.

possible rule updates.⁷³ The proposed rule requires assisted living facilities with pools, spas, or open water hazards to implement and maintain a written policy pertaining to the use of water safety barriers, water safety devices and equipment, and cardiopulmonary resuscitation. The policy must be available for review by DOH.⁷⁴

The proposed rule provides that if an assisted living facility has a pool, spa, or open water hazard that is not considered a public swimming pool, the facility must have direct supervision by an adult employee when in use or when the area is occupied by minors and other residents or visitors that cannot swim. The individual responsible for supervision during water activities or near water hazards must be knowledgeable of:⁷⁵

- The written policy;
- The correct use of water safety devices and equipment;
- The correct use of any water safety barriers; and
- Cardiopulmonary resuscitation procedures.

The proposed rule also provides that an assisted living facility with a pool or spa that is not considered a public swimming pool, must have a residential swimming pool barrier that meets the standards of the Building Code, and be equipped with water safety devices including a shepherd's hook not less than 16 feet in length and an 18-inch diameter lifesaving ring.⁷⁶

III. Effect of Proposed Changes:

Section 1 amends s. 381.0065, F.S., to allow the owner of an onsite sewage treatment and disposal system, or the owner's contractor, to select a private provider to provide official inspection services of such systems in lieu of the Department of Health (DOH). This authorization is substantially similar to the provisions governing private building inspectors in ch. 553, F.S.

An owner or contractor using a private provider must notify the DOH two days prior to the first inspection of their intention to use a private provider. This notification must include the private provider's business information, professional license or certification number, and qualification statements or resumes. It must also include an acknowledgement form with prescribed language stating the owner's rights and liabilities to the DOH. An owner or contractor who changes the listed private providers must also update the notice given to the DOH.

The DOH must reduce permit fees based on savings to the DOH due to a private provider providing the inspection services.

⁷³ DOH, *Group Care Facilities*, <http://www.floridahealth.gov/environmental-health/group-care-facilities/index.html> (last visited Feb. 25, 2021). Department of State, History of Rule 64E-12.011 since Jan. 6, 2006, Florida Administrative Code & Florida Administrative Register <https://www.flrules.org/gateway/RuleNo.asp?title=COMMUNITY%20BASED%20RESIDENTIAL%20FACILITIES&ID=64E-12.011> (last visited Feb. 25, 2021).

⁷⁴ Email from Andrew Love, Legislative Planning Director, Department of Health, FW: Violations at pool inspections Re: Pool Bills- Exemption for HOAs HB 463/SB 902 (Feb. 26, 2021).

⁷⁵ *Id.*

⁷⁶ *Id.*

OSTDS inspection services may be performed only by a private provider, a duly authorized representative of a private provider, or a person who is:

- Certified as an environmental health professional⁷⁷ by DOH under s. 381.0101, F.S.;
- A master septic contractor⁷⁸ licensed by DBPR pursuant to chapter 489;
- A professional engineer who has passed all three parts of the OSTDS Accelerated Certification Training⁷⁹; or
- A person working as staff under such an engineer, who has also passed all three parts of the OSTDS Accelerated Certification Training.

The DOH may audit the performance of onsite sewage treatment and disposal system inspection services by private providers. Such an audit cannot occur more than four times per month unless the DOH determines that an inspected and passed OSTDS should not have passed. Audits may not delay work following a passed inspection.

Section 2 amends s. 514.0115, F.S., to prohibit DOH from requiring assisted living facilities with pools to comply with DOH rules relating to swimming pool lifeguards.

Section 3 amends s. 553.73, F.S., to provide that a substantially affected person⁸⁰ may petition the Commission for a non-binding advisory opinion for any local government⁸¹ regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Building Code and was not adopted in accordance with the process for adopting local amendments to the Building Code.

The Commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the Building Code if the substantially affected person submits a petition to the Commission. The petition must also be submitted to the local government's general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days, and send a copy of its response to the

⁷⁷ "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. Section 381.0101(1)(d), F.S.

⁷⁸ "Master septic tank contractor" means a septic tank contractor whose services are unlimited in the septic tank trade who has had at least 3 years' experience as a Florida-registered septic tank contractor or a certified plumbing contractor who has provided septic tank contracting services for at least 3 years and who has the experience, knowledge, and skills to install, maintain, repair, close repairs of, and alter all types of onsite sewage treatment and disposal systems, to design onsite sewage treatment and disposal systems, where not prohibited by law, to perform and submit soil evaluations, when determined to meet site-evaluation expertise established by rule, and to use materials and items used in the installation and maintenance of all types of onsite sewage treatment and disposal systems. Section 489.551(2), F.S.

⁷⁹ The OSTDS Accelerated Certification Training program, administered by DOH, provides five days of training on OSTDSs and results in a special certification. The program is available to private individuals, septic tank contractors, licensed plumbers, professional engineers, and staff working under professional engineers. Department of Health, *Accelerated Environmental Health Professional Certification and Master Septic Tank Contractor Training Participation and Examination Guide*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/training/documents/act-part-n-exam-guide1-12-2021.pdf> (last accessed April 1, 2021).

⁸⁰ A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.

⁸¹ A "local government" means a county, municipality, special district, or political subdivision of the state.

Commission. The petition must be made using a form adopted by the Commission which contains at a minimum:

- The name of the local government that enacted the regulation;
- The name and address of the local government’s general counsel;
- The name, address, and phone number of the substantially affected person;
- An explanation of how the person is substantially affected by the local government’s regulation; and
- A statement of why the regulation is a technical amendment to the Building Code, and which provisions of the Building Code are amended by the regulation, if any.

Upon receiving a petition to review a local government’s regulation, the Commission must publish the petition and the local government’s response on the building code information system and allow for comments to be posted by interested parties.

The Commission must consider the petition, the local government’s response, any comments posted on the Commission’s website, and any recommendation provided by a TAC. The Commission must issue a non-binding advisory opinion stating whether the local government’s regulation is a technical amendment to the Building Code within 30 days of receiving the petition. The Commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

Section 3 further provides that the Commission may also issue an “errata to the code” to correct demonstrated errors in provisions contained with the Building Code. An “errata to the code” means a list of errors on current and previous editions of the Building Code.

The determination of such errors and the issuance of an “errata to the code” must be approved by a 75 percent supermajority vote of the Commission.

Section 5 amends s. 553.79, F.S., to prohibit a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

Section 6 amends s. 553.791, F.S., to expressly authorize local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

Section 7 amends s. 553.842, F.S., to require the Commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

Sections 4, 8, and 9 correct statutory references to conform to changes made by the bill.

Section 10 provides the bill takes effect July 1, 2021.

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:

This bill may implicate the constitutional single subject rule. Section 6 of Art. III of the Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: "Every law shall embrace but one subject and matter properly connected therewith...." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.

The title of the bill is "An act relating to the Florida Building Code." However, section one of the bill relates to the inspection of OSTDSs, and section two relates to the Department of Health's lifeguard standards for pools serving assisted living facilities, which may not properly connect to the Florida Building Code.

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

None.

B. Private Sector Impact:

Allowing the use of private providers to inspect OSTDSs may increase efficiencies and lower costs for OSTDS owners. Additionally, persons qualified to be a private provider under the bill will be able to offer official inspection services, increasing business opportunities.

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact by preventing certain proprietary information from becoming public.

C. Government Sector Impact:

Allowing the use of private providers to inspect OSTDSs may save government funds by lightening the burden on local arms of the DOH.

The Commission may see an increased workload related to establishing a process for accepting petitions from affected persons, issuing non-binding advisory opinions, and adopting errata to the code. However, the workload should be able to be absorbed within existing resources.⁸²

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 provides that certain OSTDS inspections may be performed by a “private provider” or a representative thereof. “Private provider” is not defined in ch. 381, F.S., and the operation of the term in the bill is unclear. An amendment may be necessary to more clearly define the professional licensing standards and requirements of a private provider.

VIII. Statutes Affected:

This bill substantially amends sections 381.0065, 514.0115, 553.73, 553.77, 553.79, 553.791, 553.842, 125.01, and 125.56, 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 Community Affairs on March 30, 2021:

The CS incorporates the provisions allowing an owner of an onsite sewage treatment and disposal system, or the owner’s contractor, to select a private provider to provide certain inspection services of such systems in lieu of the DOH. It also expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

B. Amendments:

None.

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

⁸² Department of Business and Professional Regulation, Agency Analysis of 2020 HB 459, p. 5 (Nov. 6, 2019). On file with Senate Community Affairs Committee.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 307

and insert:

Section 1. Subsection (8) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(8) PRIVATE PROVIDER INSPECTION SERVICES.—

(a) Notwithstanding any other law, ordinance, or policy,



11 the fee owner of an onsite sewage treatment and disposal system,
12 or the fee owner's contractor upon written authorization from
13 the fee owner, may select a private provider to provide
14 inspection services for onsite sewage treatment and disposal
15 systems and may pay the private provider directly for such
16 services if such services are the subject of a written contract
17 between the private provider, or the private provider's firm,
18 and the fee owner or the fee owner's contractor, upon written
19 authorization of the fee owner.

20 (b) It is the intent of the Legislature that owners and
21 contractors pay reduced fees related to onsite sewage treatment
22 disposal system inspections when selecting a private provider to
23 provide such inspections. The department must calculate the cost
24 savings to the department based on a fee owner or contractor
25 hiring a private provider to perform inspections in lieu of the
26 department and reduce permit fees accordingly. The department
27 may not charge fees for an inspection if the fee owner or
28 contractor hires a private provider to perform the inspection.

29 (c) Onsite sewage treatment and disposal system inspection
30 services may be performed only by a private provider or a duly
31 authorized representative of a private provider within the
32 disciplines covered under such person's licensure or if the
33 person is certified under s. 381.0101, is a master septic
34 contractor licensed pursuant to chapter 489, is a professional
35 engineer who has passed all three parts of the OSTDS Accelerated
36 Certification Training, or is a person working as staff under
37 the supervision of a licensed professional engineer and has
38 passed all three parts of the OSTDS Accelerated Certification
39 Training.



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40 (d)1. A fee owner or the fee owner's contractor using a
41 private provider for onsite sewage treatment and disposal system
42 inspection services must provide notice to the department at the
43 time of permit application, or by 2 p.m. local time, 2 business
44 days before the first scheduled inspection by the department.

45 The notice must include the following information:

46 a. The name, firm, address, telephone number, and e-mail
47 address of each private provider who is performing or will
48 perform such services, the private provider's professional
49 license or certification number, and qualification statements or
50 resumes for each private provider; and

51 b. An acknowledgment from the fee owner in substantially
52 the following form:

53
54 I have elected to use one or more private providers to
55 provide onsite sewage treatment and disposal system
56 inspection services that are the subject of the
57 enclosed permit application. I understand that the
58 department may not perform the required onsite sewage
59 treatment and disposal system inspections to determine
60 compliance with the applicable codes, except to the
61 extent authorized by law. Instead, inspections will be
62 performed by the licensed or certified personnel
63 identified in the application. By executing this form,
64 I acknowledge that I have made inquiry regarding the
65 competence of the licensed or certified personnel and
66 am satisfied that my interests are adequately
67 protected. I agree to indemnify, defend, and hold
68 harmless the department from any and all claims



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69 arising from my use of these licensed or certified
70 personnel to perform onsite sewage treatment and
71 disposable system inspections with respect to the
72 onsite sewage treatment and disposable system that are
73 the subject of the enclosed permit application.

74
75 2. If the fee owner or the fee owner's contractor makes any
76 changes to the listed private providers or the services to be
77 provided by the private providers, the fee owner or the fee
78 owner's contractor must update the notice to reflect the change
79 within 1 business day after the change. A change of a duly
80 authorized representative named in the permit application does
81 not require a revision of the permit and the department may not
82 charge a fee for making such change.

83 (e) The department may audit the performance of onsite
84 sewage treatment and disposal system inspection services by
85 private providers. However, the same private provider may not be
86 audited more than four times in a month unless the department
87 determines that an onsite sewage treatment and disposal system
88 inspected by the private provider should not have passed
89 inspection. Work on a building, a structure, or an onsite sewage
90 treatment and disposal system may proceed after inspection and
91 approval by a private provider if the fee owner or fee owner's
92 contractor has given notice of the inspection pursuant to
93 subsection (4) and, subsequent to such inspection and approval,
94 may not be delayed for completion of an inspection audit by the
95 department.

96 Section 2. Present subsections (3) through (8) of section
97 514.0115, Florida Statutes, are redesignated as subsections (4)



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98 through (9), respectively, and a new subsection (3) is added to
99 that section, to read:

100 514.0115 Exemptions from supervision or regulation;
101 variances.—

102 (3) The department may not require compliance with rules
103 relating to swimming pool lifeguard standards for pools serving
104 assisted living facilities.

105 Section 3. Subsections (4) and (8) of section 553.73,
106 Florida Statutes, are amended to read:

107 553.73 Florida Building Code.—

108 (4) (a) All entities authorized to enforce the Florida
109 Building Code under ~~pursuant to~~ s. 553.80 shall comply with
110 applicable standards for issuance of mandatory certificates of
111 occupancy, minimum types of inspections, and procedures for
112 plans review and inspections as established by the commission by
113 rule. Local governments may adopt amendments to the
114 administrative provisions of the Florida Building Code, subject
115 to the limitations in ~~of~~ this subsection ~~paragraph~~. Local
116 amendments must ~~shall~~ be more stringent than the minimum
117 standards described in this section ~~herein~~ and must ~~shall~~ be
118 transmitted to the commission within 30 days after enactment.
119 The local government shall make such amendments available to the
120 general public in a usable format. The State Fire Marshal is
121 responsible for establishing the standards and procedures
122 required in this subsection ~~paragraph~~ for governmental entities
123 with respect to applying the Florida Fire Prevention Code and
124 the Life Safety Code.

125 (b) Local governments may, subject to the limitations in ~~of~~
126 this section and not more than once every 6 months, adopt



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127 amendments to the technical provisions of the Florida Building
128 Code that ~~which~~ apply solely within the jurisdiction of such
129 government and that ~~which~~ provide for more stringent
130 requirements than those specified in the Florida Building Code, ~~7~~
131 ~~not more than once every 6 months~~. A local government may adopt
132 technical amendments that address local needs if:

133 1. The local governing body determines, following a public
134 hearing which has been advertised in a newspaper of general
135 circulation at least 10 days before the hearing, that there is a
136 need to strengthen the requirements of the Florida Building
137 Code. The determination must be based upon a review of local
138 conditions by the local governing body, which review
139 demonstrates by evidence or data that the geographical
140 jurisdiction governed by the local governing body exhibits a
141 local need to strengthen the Florida Building Code beyond the
142 needs or regional variation addressed by the Florida Building
143 Code, that the local need is addressed by the proposed local
144 amendment, and that the amendment is no more stringent than
145 necessary to address the local need.

146 2. Such additional requirements are not discriminatory
147 against materials, products, or construction techniques of
148 demonstrated capabilities.

149 3. Such additional requirements may not introduce a new
150 subject not addressed in the Florida Building Code.

151 (c)4. The enforcing agency shall make readily available, in
152 a usable format, all amendments adopted under ~~pursuant to~~ this
153 section.

154 (d)5. Any amendment to the Florida Building Code shall be
155 transmitted within 30 days after adoption by the ~~adopting~~ local



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156 government to the commission. The commission shall maintain
157 copies of all such amendments in a format that is usable and
158 obtainable by the public. Local technical amendments are shall
159 not ~~become~~ effective until 30 days after the amendment has been
160 received and published by the commission.

161 (e)6. ~~An Any~~ amendment to the Florida Building Code adopted
162 by a local government under pursuant to this subsection is
163 ~~paragraph shall be~~ effective only until the adoption ~~by the~~
164 ~~commission~~ of the new edition of the Florida Building Code by
165 the commission every third year. At such time, the commission
166 shall review such amendment for consistency with the criteria in
167 paragraph (9) (a) and adopt such amendment as part of the Florida
168 Building Code or rescind the amendment. The commission shall
169 immediately notify the respective local government of the
170 rescission of any amendment. After receiving such notice, the
171 respective local government may readopt the rescinded amendment
172 under pursuant to the provisions of this subsection paragraph.

173 (f)7. Each county and municipality desiring to make local
174 technical amendments to the Florida Building Code shall ~~by~~
175 ~~interlocal agreement~~ establish by interlocal agreement a
176 countywide compliance review board to review any amendment to
177 the Florida Building Code that is, adopted by a local government
178 within the county under pursuant to this subsection and
179 ~~paragraph,~~ that is challenged by a any substantially affected
180 party for purposes of determining the amendment's compliance
181 with this subsection paragraph. If challenged, the local
182 technical amendments are shall not ~~become~~ effective until the
183 time for filing an appeal under paragraph (g) pursuant to
184 ~~subparagraph 8.~~ has expired or, if there is an appeal, until the



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185 commission issues its final order determining if the adopted
186 amendment is in compliance with this subsection.

187 (g)~~8-~~ If the compliance review board determines such
188 amendment is not in compliance with this subsection ~~paragraph~~,
189 the compliance review board shall notify such local government
190 of the noncompliance and that the amendment is invalid and
191 unenforceable until the local government corrects the amendment
192 to bring it into compliance. The local government may appeal the
193 decision of the compliance review board to the commission. If
194 the compliance review board determines that such amendment is ~~to~~
195 ~~be~~ in compliance with this subsection ~~paragraph~~, any
196 substantially affected party may appeal such determination to
197 the commission. Any such appeal must ~~shall~~ be filed with the
198 commission within 14 days after ~~of~~ the board's written
199 determination. The commission shall promptly refer the appeal to
200 the Division of Administrative Hearings by electronic means
201 through the division's website for the assignment of an
202 administrative law judge. The administrative law judge shall
203 conduct the required hearing within 30 days after being assigned
204 to the appeal, and shall enter a recommended order within 30
205 days after ~~of~~ the conclusion of such hearing. The commission
206 shall enter a final order within 30 days after an order is
207 rendered thereafter. ~~The provisions of~~ Chapter 120 and the
208 uniform rules of procedure shall apply to such proceedings. The
209 local government adopting the amendment that is subject to
210 challenge has the burden of proving that the amendment complies
211 with this subsection ~~paragraph~~ in proceedings before the
212 compliance review board and the commission, as applicable.
213 Actions of the commission are subject to judicial review under



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214 ~~pursuant to~~ s. 120.68. The compliance review board shall
215 determine whether its decisions apply to a respective local
216 jurisdiction or apply countywide.

217 ~~(h)9.~~ An amendment adopted under this subsection ~~paragraph~~
218 must shall include a fiscal impact statement that which
219 documents the costs and benefits of the proposed amendment.
220 Criteria for the fiscal impact statement shall include the
221 impact to local government relative to enforcement and, the
222 impact to property and building owners and, ~~as well as to~~
223 ~~industry,~~ relative to the cost of compliance. The fiscal impact
224 statement may not be used as a basis for challenging the
225 amendment for compliance.

226 ~~(i)10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs~~
227 ~~7. and 9.,~~ the commission may review any amendments adopted
228 under ~~pursuant to~~ this subsection and make nonbinding
229 recommendations related to compliance of such amendments with
230 this subsection.

231 ~~(j)(e)~~ Any amendment adopted by a local enforcing agency
232 under ~~pursuant to~~ this subsection may shall not apply to state
233 or school district owned buildings, manufactured buildings or
234 factory-built school buildings approved by the commission, or
235 prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The
236 respective responsible entities shall consider the physical
237 performance parameters substantiating such amendments when
238 designing, specifying, and constructing such exempt buildings.

239 ~~(k)(d)~~ A technical amendment to the Florida Building Code
240 related to water conservation practices or design criteria
241 adopted by a local government under ~~pursuant to~~ this subsection
242 is not ~~rendered~~ void when the code is updated if the technical



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243 amendment is necessary to protect or provide for more efficient
244 use of water resources as provided in s. 373.621. However, any
245 such technical amendment carried forward into the next edition
246 of the code under ~~pursuant to~~ this paragraph is subject to
247 review or modification as provided in this part.

248 (1) If a local government adopts a regulation, law,
249 ordinance, policy, amendment, or land use or zoning provision
250 without using the process established in this subsection, and a
251 substantially affected person considers such regulation, law,
252 ordinance, policy, amendment, or land use or zoning provision to
253 be a technical amendment to the Florida Building Code, then the
254 substantially affected person may submit a petition to the
255 commission for a nonbinding advisory opinion. If a substantially
256 affected person submits a request in accordance with this
257 paragraph, the commission shall issue a nonbinding advisory
258 opinion stating whether or not the commission interprets the
259 regulation, law, ordinance, policy, amendment, or land use or
260 zoning provision as a technical amendment to the Florida
261 Building Code. As used in this paragraph, the term "local
262 government" means a county, municipality, special district, or
263 political subdivision of the state.

264 1. Requests to review a local government regulation, law,
265 ordinance, policy, amendment, or land use or zoning provision
266 may be initiated by any substantially affected person. A
267 substantially affected person includes an owner or builder
268 subject to the regulation, law, ordinance, policy, amendment, or
269 land use or zoning provision, or an association of owners or
270 builders having members who are subject to the regulation, law,
271 ordinance, policy, amendment, or land use or zoning provision.



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272 2. In order to initiate a review, a substantially affected
273 person must file a petition with the commission. The commission
274 shall adopt a form for the petition and directions for filing,
275 which shall be published on the Building Code Information
276 System. The form shall, at a minimum, require the following:
277 a. The name of the local government that enacted the
278 regulation, law, ordinance, policy, amendment, or land use or
279 zoning provision.
280 b. The name and address of the local government's general
281 counsel or administrator.
282 c. The name, address, and telephone number of the
283 petitioner; the name, address, and telephone number of the
284 petitioner's representative, if any; and an explanation of how
285 the petitioner's substantial interests are being affected by the
286 regulation, law, ordinance, policy, amendment, or land use or
287 zoning provision.
288 d. A statement explaining why the regulation, law,
289 ordinance, policy, amendment, or land use or zoning provision is
290 a technical amendment to the Florida Building Code, and which
291 provisions of the Florida Building Code, if any, are being
292 amended by the regulation, law, ordinance, policy, amendment, or
293 land use or zoning provision.
294 3. The petitioner shall serve the petition on the local
295 government's general counsel or administrator by certified mail,
296 return receipt requested, and send a copy of the petition to the
297 commission, in accordance with the commission's published
298 directions. The local government shall respond to the petition
299 in accordance with the form by certified mail, return receipt
300 requested, and send a copy of its response to the commission,



301 within 14 days after receipt of the petition, including
302 Saturdays, Sundays, and legal holidays.

303 4. Upon receipt of a petition that meets the requirements
304 of this paragraph, the commission shall publish the petition,
305 including any response submitted by the local government, on the
306 Building Code Information System in a manner that allows
307 interested persons to address the issues by posting comments.

308 5. Before issuing an advisory opinion, the commission shall
309 consider the petition, the response, and any comments posted on
310 the Building Code Information System. The commission may also
311 provide the petition, the response, and any comments posted on
312 the Building Code Information System to a technical advisory
313 committee, and may consider any recommendation provided by the
314 technical advisory committee. The commission shall issue an
315 advisory opinion stating whether the regulation, law, ordinance,
316 policy, amendment, or land use or zoning provision is a
317 technical amendment to the Florida Building Code within 30 days
318 after the filing of the petition, including Saturdays, Sundays,
319 and legal holidays. The commission shall publish its advisory
320 opinion on the Building Code Information System and in the
321 Florida Administrative Register. The commission's advisory
322 opinion is nonbinding and is not a declaratory statement under
323 s. 120.565.

324 (8) Notwithstanding subsection (3) or subsection (7), the
325 commission may address issues identified in this subsection by
326 amending the code under ~~pursuant to~~ the rule adoption procedures
327 in chapter 120. Updates to the Florida Building Code, including
328 provisions contained in referenced standards and criteria which
329 relate to wind resistance or the prevention of water intrusion,



330 may not be amended under ~~pursuant to~~ this subsection to diminish
331 those standards; however, the commission may amend the Florida
332 Building Code to enhance such standards. Following the approval
333 of any amendments to the Florida Building Code by the commission
334 and publication of the amendments on the commission's website,
335 authorities having jurisdiction to enforce the Florida Building
336 Code may enforce the amendments.

337 (a) The commission may approve amendments that are needed
338 to address:

339 1.~~(a)~~ Conflicts within the updated code;

340 2.~~(b)~~ Conflicts between the updated code and the Florida
341 Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;

342 3.~~(c)~~ Unintended results from the integration of previously
343 adopted amendments with the model code;

344 4.~~(d)~~ Equivalency of standards;

345 5.~~(e)~~ Changes to or inconsistencies with federal or state
346 law; or

347 6.~~(f)~~ Adoption of an updated edition of the National
348 Electrical Code if the commission finds that delay of
349 implementing the updated edition causes undue hardship to
350 stakeholders or otherwise threatens the public health, safety,
351 and welfare.

352 (b) The commission may issue errata to the code to correct
353 demonstrated errors in provisions contained within the Florida
354 Building Code. The determination of such errors and the issuance
355 of errata to the code must be approved by a 75 percent
356 supermajority vote of the commission. For purposes of this
357 paragraph, "errata to the code" means a list of errors in
358 current and previous editions of the Florida Building Code.



359 Section 4. Subsection (7) of section 553.77, Florida
360 Statutes, is amended to read:

361 553.77 Specific powers of the commission.—
362 (7) Building officials shall recognize and enforce variance
363 orders issued by the Department of Health under s. 514.0115(9)
364 ~~pursuant to s. 514.0115(8)~~, including any conditions attached to
365 the granting of the variance.

366 Section 5. Paragraph (d) is added to subsection (1) of
367 section 553.79, Florida Statutes, to read:

368 553.79 Permits; applications; issuance; inspections.—
369 (1)
370 (d) A local government may not require a contract between a
371 builder and an owner for the issuance of a building permit or as
372 a requirement for the submission of a building permit
373 application.

374 Section 6. Subsection (20) is added to section 553.791,
375 Florida Statutes, to read:

376 553.791 Alternative plans review and inspection.—
377 (20) Notwithstanding any other law, a county, a
378 municipality, a school district, or an independent special
379 district may use a private provider to provide building code
380 inspection services for a public works project, an improvement,
381 a building, or any other structure pursuant to this section.

382
383 ===== T I T L E A M E N D M E N T =====

384 And the title is amended as follows:

385 Delete lines 3 - 21
386 and insert:
387 s. 381.0065, F.S.; authorizing fee owners or fee



388 owners' contractors to select private providers to
389 provide inspection services for onsite sewage
390 treatment and disposal systems if certain requirements
391 are met; providing legislative intent; requiring the
392 Department of Health to reduce certain permit fees;
393 prohibiting the department from charging inspection
394 fees if the fee owner or contractor hires a private
395 provider to perform an inspection; providing
396 requirements for private providers or duly authorized
397 representatives of private providers performing such
398 inspections; requiring fee owners or contractors to
399 provide specified notice to the department when using
400 a private provider for such inspections; providing
401 requirements for the contents of such notice;
402 prohibiting the department from charging a fee for
403 changing the duly authorized representative named in a
404 permit application; authorizing the department to
405 audit the performance of private providers; providing
406 requirements relating to work on a building, a
407 structure, or an onsite sewage treatment and disposal
408 system relating to such audits; amending s. 514.0115,
409 F.S.; prohibiting the Department of Health from
410 requiring that pools serving assisted living
411 facilities be compliant with rules relating to
412 swimming pool lifeguards; amending s. 553.73, F.S.;
413 authorizing a substantially affected person to file a
414 petition with the Florida Building Commission to
415 review certain local government regulations, laws,
416 ordinances, policies, amendments, or land use or



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417 zoning provisions; defining the term "local
418 government"; providing requirements for the petition
419 and commission; requiring the commission to issue a
420 nonbinding advisory opinion within a specified
421 timeframe; authorizing the commission to issue errata
422 to the code; defining the term "errata to the code";
423 making technical changes; amending s. 553.77, F.S.;
424 conforming a cross-reference; amending s. 553.79,
425 F.S.; prohibiting a local government from requiring
426 certain contracts for the application for or issuance
427 of a building permit; amending s. 553.791, F.S.;
428 authorizing a county, a municipality, a school
429 district, or an independent special district to use a
430 private provider to provide building code inspection
431 services for certain purposes; amending s. 553.842,
432 F.S.;

By Senator Brodeur

9-00990-21

20211146__

A bill to be entitled

An act relating to the Florida Building Code; amending s. 514.0115, F.S.; prohibiting the Department of Health from requiring that pools serving assisted living facilities be compliant with rules relating to swimming pool lifeguards; amending s. 553.73, F.S.; authorizing a substantially affected person to file a petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; authorizing the commission to issue errata to the code; defining the term "errata to the code"; making technical changes; amending s. 553.77, F.S.; conforming a cross-reference; amending s. 553.79, F.S.; prohibiting a local government from requiring certain contracts for the application for or issuance of a building permit; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; amending ss. 125.01 and 125.56, F.S.; conforming cross-references; making technical changes; providing an effective date.

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

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

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Section 1. Present subsections (3) through (8) of section 514.0115, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) The department may not require compliance with rules relating to swimming pool lifeguard standards for pools serving assisted living facilities.

Section 2. Subsections (4) and (8) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(4) (a) All entities authorized to enforce the Florida Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this section herein and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

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

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59 (b) Local governments may, subject to the limitations in ~~of~~
 60 this section and not more than once every 6 months, adopt
 61 amendments to the technical provisions of the Florida Building
 62 Code ~~that which~~ apply solely within the jurisdiction of such
 63 government and ~~that which~~ provide for more stringent
 64 requirements than those specified in the Florida Building Code,
 65 ~~not more than once every 6 months~~. A local government may adopt
 66 technical amendments that address local needs if:

67 1. The local governing body determines, following a public
 68 hearing which has been advertised in a newspaper of general
 69 circulation at least 10 days before the hearing, that there is a
 70 need to strengthen the requirements of the Florida Building
 71 Code. The determination must be based upon a review of local
 72 conditions by the local governing body, which review
 73 demonstrates by evidence or data that the geographical
 74 jurisdiction governed by the local governing body exhibits a
 75 local need to strengthen the Florida Building Code beyond the
 76 needs or regional variation addressed by the Florida Building
 77 Code, that the local need is addressed by the proposed local
 78 amendment, and that the amendment is no more stringent than
 79 necessary to address the local need.

80 2. Such additional requirements are not discriminatory
 81 against materials, products, or construction techniques of
 82 demonstrated capabilities.

83 3. Such additional requirements may not introduce a new
 84 subject not addressed in the Florida Building Code.

85 ~~(c)4-~~ The enforcing agency shall make readily available, in
 86 a usable format, all amendments adopted under pursuant to this
 87 section.

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88 ~~(d)5-~~ Any amendment to the Florida Building Code shall be
 89 transmitted within 30 days after adoption by the ~~adopting~~ local
 90 government to the commission. The commission shall maintain
 91 copies of all such amendments in a format that is usable and
 92 obtainable by the public. Local technical amendments are shall
 93 ~~not become~~ effective until 30 days after the amendment has been
 94 received and published by the commission.

95 ~~(e)6-~~ An ~~Any~~ amendment to the Florida Building Code adopted
 96 by a local government under pursuant to this subsection is
 97 ~~paragraph shall be~~ effective only until the adoption by the
 98 ~~commission~~ of the new edition of the Florida Building Code by
 99 the commission every third year. At such time, the commission
 100 shall review such amendment for consistency with the criteria in
 101 paragraph (9) (a) and adopt such amendment as part of the Florida
 102 Building Code or rescind the amendment. The commission shall
 103 immediately notify the respective local government of the
 104 rescission of any amendment. After receiving such notice, the
 105 respective local government may readopt the rescinded amendment
 106 under pursuant to the provisions of this subsection paragraph.

107 ~~(f)7-~~ Each county and municipality desiring to make local
 108 technical amendments to the Florida Building Code shall by
 109 ~~interlocal agreement~~ establish by interlocal agreement a
 110 countywide compliance review board to review any amendment to
 111 the Florida Building Code that is, adopted by a local government
 112 within the county under pursuant to this subsection and
 113 ~~paragraph,~~ that is challenged by a any substantially affected
 114 party for purposes of determining the amendment's compliance
 115 with this subsection paragraph. If challenged, the local
 116 technical amendments are shall not ~~become~~ effective until the

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117 time for filing an appeal under paragraph (g) pursuant to
 118 ~~subparagraph 9.~~ has expired or, if there is an appeal, until the
 119 commission issues its final order determining if the adopted
 120 amendment is in compliance with this subsection.

121 ~~(g) 9-~~ If the compliance review board determines such
 122 amendment is not in compliance with this ~~subsection paragraph,~~
 123 the compliance review board shall notify such local government
 124 of the noncompliance and that the amendment is invalid and
 125 unenforceable until the local government corrects the amendment
 126 to bring it into compliance. The local government may appeal the
 127 decision of the compliance review board to the commission. If
 128 the compliance review board determines that such amendment is is ~~to~~
 129 ~~be~~ in compliance with this ~~subsection paragraph,~~ any
 130 substantially affected party may appeal such determination to
 131 the commission. Any such appeal must shall be filed with the
 132 commission within 14 days after ~~of~~ the board's written
 133 determination. The commission shall promptly refer the appeal to
 134 the Division of Administrative Hearings by electronic means
 135 through the division's website for the assignment of an
 136 administrative law judge. The administrative law judge shall
 137 conduct the required hearing within 30 days after being assigned
 138 to the appeal, and shall enter a recommended order within 30
 139 days after ~~of~~ the conclusion of such hearing. The commission
 140 shall enter a final order within 30 days after an order is
 141 rendered thereafter. ~~The provisions of~~ Chapter 120 and the
 142 uniform rules of procedure shall apply to such proceedings. The
 143 local government adopting the amendment that is subject to
 144 challenge has the burden of proving that the amendment complies
 145 with this ~~subsection paragraph~~ in proceedings before the

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146 compliance review board and the commission, as applicable.
 147 Actions of the commission are subject to judicial review under
 148 ~~pursuant to~~ s. 120.68. The compliance review board shall
 149 determine whether its decisions apply to a respective local
 150 jurisdiction or apply countywide.

151 ~~(h) 9-~~ An amendment adopted under this ~~subsection paragraph~~
 152 ~~must shall~~ include a fiscal impact statement that which
 153 documents the costs and benefits of the proposed amendment.
 154 Criteria for the fiscal impact statement shall include the
 155 impact to local government relative to enforcement and, the
 156 impact to property and building owners and, ~~as well as to~~
 157 industry, relative to the cost of compliance. The fiscal impact
 158 statement may not be used as a basis for challenging the
 159 amendment for compliance.

160 ~~(i) 10-~~ In addition to paragraphs (f) and (g) subparagraphs
 161 ~~7. and 9.,~~ the commission may review any amendments adopted
 162 under pursuant to this subsection and make nonbinding
 163 recommendations related to compliance of such amendments with
 164 this subsection.

165 ~~(j) (e)~~ Any amendment adopted by a local enforcing agency
 166 under pursuant to this subsection may shall not apply to state
 167 or school district owned buildings, manufactured buildings or
 168 factory-built school buildings approved by the commission, or
 169 prototype buildings approved under pursuant to s. 553.77(3). The
 170 respective responsible entities shall consider the physical
 171 performance parameters substantiating such amendments when
 172 designing, specifying, and constructing such exempt buildings.

173 ~~(k) (d)~~ A technical amendment to the Florida Building Code
 174 related to water conservation practices or design criteria

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 175 adopted by a local government ~~under pursuant to~~ this subsection
 176 is not ~~rendered~~ void when the code is updated if the technical
 177 amendment is necessary to protect or provide for more efficient
 178 use of water resources as provided in s. 373.621. However, any
 179 such technical amendment carried forward into the next edition
 180 of the code ~~under pursuant to~~ this paragraph is subject to
 181 review or modification as provided in this part.

(1) If a local government adopts a regulation, law,
 ordinance, policy, amendment, or land use or zoning provision
 without using the process established in this subsection, and a
 substantially affected person considers such regulation, law,
 ordinance, policy, amendment, or land use or zoning provision to
 be a technical amendment to the Florida Building Code, then the
 substantially affected person may submit a petition to the
 commission for a nonbinding advisory opinion. If a substantially
 affected person submits a request in accordance with this
 paragraph, the commission shall issue a nonbinding advisory
 opinion stating whether or not the commission interprets the
 regulation, law, ordinance, policy, amendment, or land use or
 zoning provision as a technical amendment to the Florida
 Building Code. As used in this paragraph, the term "local
 government" means a county, municipality, special district, or
 political subdivision of the state.

1. Requests to review a local government regulation, law,
 ordinance, policy, amendment, or land use or zoning provision
 may be initiated by any substantially affected person. A
 substantially affected person includes an owner or builder
 subject to the regulation, law, ordinance, policy, amendment, or
 land use or zoning provision, or an association of owners or

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 204 builders having members who are subject to the regulation, law,
 205 ordinance, policy, amendment, or land use or zoning provision.
 206 2. In order to initiate a review, a substantially affected
 207 person must file a petition with the commission. The commission
 208 shall adopt a form for the petition and directions for filing,
 209 which shall be published on the Building Code Information
 210 System. The form shall, at a minimum, require the following:
 211 a. The name of the local government that enacted the
 212 regulation, law, ordinance, policy, amendment, or land use or
 213 zoning provision.
 214 b. The name and address of the local government's general
 215 counsel or administrator.
 216 c. The name, address, and telephone number of the
 217 petitioner; the name, address, and telephone number of the
 218 petitioner's representative, if any; and an explanation of how
 219 the petitioner's substantial interests are being affected by the
 220 regulation, law, ordinance, policy, amendment, or land use or
 221 zoning provision.
 222 d. A statement explaining why the regulation, law,
 223 ordinance, policy, amendment, or land use or zoning provision is
 224 a technical amendment to the Florida Building Code, and which
 225 provisions of the Florida Building Code, if any, are being
 226 amended by the regulation, law, ordinance, policy, amendment, or
 227 land use or zoning provision.
 228 3. The petitioner shall serve the petition on the local
 229 government's general counsel or administrator by certified mail,
 230 return receipt requested, and send a copy of the petition to the
 231 commission, in accordance with the commission's published
 232 directions. The local government shall respond to the petition

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233 in accordance with the form by certified mail, return receipt
 234 requested, and send a copy of its response to the commission,
 235 within 14 days after receipt of the petition, including
 236 Saturdays, Sundays, and legal holidays.

237 4. Upon receipt of a petition that meets the requirements
 238 of this paragraph, the commission shall publish the petition,
 239 including any response submitted by the local government, on the
 240 Building Code Information System in a manner that allows
 241 interested persons to address the issues by posting comments.

242 5. Before issuing an advisory opinion, the commission shall
 243 consider the petition, the response, and any comments posted on
 244 the Building Code Information System. The commission may also
 245 provide the petition, the response, and any comments posted on
 246 the Building Code Information System to a technical advisory
 247 committee, and may consider any recommendation provided by the
 248 technical advisory committee. The commission shall issue an
 249 advisory opinion stating whether the regulation, law, ordinance,
 250 policy, amendment, or land use or zoning provision is a
 251 technical amendment to the Florida Building Code within 30 days
 252 after the filing of the petition, including Saturdays, Sundays,
 253 and legal holidays. The commission shall publish its advisory
 254 opinion on the Building Code Information System and in the
 255 Florida Administrative Register. The commission's advisory
 256 opinion is nonbinding and is not a declaratory statement under
 257 s. 120.565.

258 (8) Notwithstanding subsection (3) or subsection (7), the
 259 commission may address issues identified in this subsection by
 260 amending the code under pursuant to the rule adoption procedures
 261 in chapter 120. Updates to the Florida Building Code, including

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262 provisions contained in referenced standards and criteria which
 263 relate to wind resistance or the prevention of water intrusion,
 264 may not be amended under pursuant to this subsection to diminish
 265 those standards; however, the commission may amend the Florida
 266 Building Code to enhance such standards. Following the approval
 267 of any amendments to the Florida Building Code by the commission
 268 and publication of the amendments on the commission's website,
 269 authorities having jurisdiction to enforce the Florida Building
 270 Code may enforce the amendments.

271 (a) The commission may approve amendments that are needed
 272 to address:

273 1. ~~(a)~~ Conflicts within the updated code;
 274 2. ~~(b)~~ Conflicts between the updated code and the Florida
 275 Fire Prevention Code adopted under pursuant to chapter 633;
 276 3. ~~(c)~~ Unintended results from the integration of previously
 277 adopted amendments with the model code;
 278 4. ~~(d)~~ Equivalency of standards;
 279 5. ~~(e)~~ Changes to or inconsistencies with federal or state
 280 law; or

281 6. ~~(f)~~ Adoption of an updated edition of the National
 282 Electrical Code if the commission finds that delay of
 283 implementing the updated edition causes undue hardship to
 284 stakeholders or otherwise threatens the public health, safety,
 285 and welfare.

286 (b) The commission may issue errata to the code to correct
 287 demonstrated errors in provisions contained within the Florida
 288 Building Code. The determination of such errors and the issuance
 289 of errata to the code must be approved by a 75 percent
 290 supermajority vote of the commission. For purposes of this

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291 paragraph, "errata to the code" means a list of errors in
 292 current and previous editions of the Florida Building Code.
 293 Section 3. Subsection (7) of section 553.77, Florida
 294 Statutes, is amended to read:
 295 553.77 Specific powers of the commission.—
 296 (7) Building officials shall recognize and enforce variance
 297 orders issued by the Department of Health under s. 514.0115(9)
 298 ~~pursuant to s. 514.0115(8)~~, including any conditions attached to
 299 the granting of the variance.
 300 Section 4. Paragraph (d) is added to subsection (1) of
 301 section 553.79, Florida Statutes, to read:
 302 553.79 Permits; applications; issuance; inspections.—
 303 (1)
 304 (d) A local government may not require a contract between a
 305 builder and an owner for the issuance of a building permit or as
 306 a requirement for the submission of a building permit
 307 application.
 308 Section 5. Paragraph (a) of subsection (8) of section
 309 553.842, Florida Statutes, is amended to read:
 310 553.842 Product evaluation and approval.—
 311 (8) The commission may adopt rules to approve the following
 312 types of entities that produce information on which product
 313 approvals are based. All of the following entities, including
 314 engineers and architects, must comply with a nationally
 315 recognized standard demonstrating independence or no conflict of
 316 interest:
 317 (a) Evaluation entities approved under pursuant to this
 318 paragraph or that meet the criteria for approval adopted by the
 319 commission by rule. The commission shall specifically approve

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320 the National Evaluation Service, the International Association
 321 of Plumbing and Mechanical Officials Evaluation Service, the
 322 International Code Council Evaluation Services, Underwriters
 323 Laboratories, LLC, Intertek Testing Services NA, Inc., and the
 324 Miami-Dade County Building Code Compliance Office Product
 325 Control Division. Architects and engineers licensed in this
 326 state are also approved to conduct product evaluations as
 327 provided in subsection (5).
 328 Section 6. Paragraph (bb) of subsection (1) of section
 329 125.01, Florida Statutes, is amended to read:
 330 125.01 Powers and duties.—
 331 (1) The legislative and governing body of a county shall
 332 have the power to carry on county government. To the extent not
 333 inconsistent with general or special law, this power includes,
 334 but is not restricted to, the power to:
 335 (bb) Enforce the Florida Building Code~~r~~ as provided in s.
 336 553.80~~r~~ and adopt and enforce local technical amendments to the
 337 Florida Building Code as provided in s. 553.73(4)~~r~~ ~~pursuant to~~
 338 ~~s. 553.73(4)(b) and (c).~~
 339 Section 7. Subsection (1) of section 125.56, Florida
 340 Statutes, is amended to read:
 341 125.56 Enforcement and amendment of the Florida Building
 342 Code and the Florida Fire Prevention Code; inspection fees;
 343 inspectors; etc.—
 344 (1) The board of county commissioners of each of the
 345 several counties of the state may enforce the Florida Building
 346 Code and the Florida Fire Prevention Code~~r~~ as provided in ss.
 347 553.80, 633.206, and 633.208~~r~~ and, at its discretion, adopt
 348 local technical amendments to the Florida Building Code as

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349 provided in s. 553.73(4), ~~pursuant to s. 553.73(4)(b) and (c)~~
350 and local technical amendments to the Florida Fire Prevention
351 Code ~~as provided in, pursuant to s. 633.202,~~ to provide for the
352 safe construction, erection, alteration, repair, securing, and
353 demolition of any building within its territory outside the
354 corporate limits of any municipality. Upon a determination to
355 consider amending the Florida Building Code or the Florida Fire
356 Prevention Code by a majority of the members of the board of
357 county commissioners of such county, the board shall call a
358 public hearing and comply with the public notice requirements of
359 s. 125.66(2). The board shall hear all interested parties at the
360 public hearing and may then amend the building code or the fire
361 code consistent with the terms and purposes of this act. Upon
362 adoption, an amendment to the code shall be in full force and
363 effect throughout the unincorporated area of such county until
364 otherwise notified by the Florida Building Commission under
365 ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant~~
366 ~~to~~ s. 633.202. This subsection does not ~~Nothing herein contained~~
367 ~~shall be construed to~~ prevent the board of county commissioners
368 from repealing such amendment to the building code or the fire
369 code at any regular meeting of such board.

370 Section 8. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-30-21
Meeting Date

SB 1274
Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name KARI HEBRANK

Job Title

Address 215 S. MONROE ST.

Phone 561-7824

Street TALLAHASSEE FL 32301
City State Zip

Email khebrank@carltonfields.com

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21 CA 3:30 A2

Meeting Date

1274

Bill Number (if applicable)

Topic Growth Management

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

Street

Tallahassee

FL

32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

SB 1274

Bill Number (if applicable)

Topic Small Scale Development Amendments

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Pl

Phone 904.671-4008

Street

St Augustine

State

FL

Zip

32084

Email jwest@1000fol.org

City

Speaking: For Against Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Received after mtg.

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

3/30/21
Meeting Date

1274
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300

Phone 222-7500

Tallahassee FL 32301
City State Zip

Email garyh@hgsllaw.com

Speaking: For Against Information

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

Representing ~~Association of Florida Community Developers~~ Association of Florida Community Developers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 Community Affairs

BILL: CS/SB 1274

INTRODUCER: Community Affairs Committee and Senator Perry

SUBJECT: Growth Management

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The Community Planning Act requires each local government to adopt a comprehensive plan to provide for orderly and balanced future economic, social, physical, environmental, and fiscal development while taking into account projected population growth, public facility needs, development over a five-year and 10-year period, comprehensive plans of adjacent local governments, and future land use.

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 10 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan. Small-scale plan amendments may be approved with a single hearing before the local government's governing body and do not require review by the Department of Economic Opportunity.

CS/SB 1274 increases the maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres. It also increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

The bill also provides that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the municipality's comprehensive plan and land development regulations so long as the vested uses, density, and intensity are consistent

with the municipality's comprehensive plan, and all existing concurrency obligations in the development order remain valid.

The bill may have a positive fiscal impact on state and local governments.

II. Present Situation:

Community Planning Act

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.¹ Each county and municipality must maintain a comprehensive plan.² Municipal comprehensive plans cover the total area of the municipality's jurisdiction, and any unincorporated areas adjacent to the municipality that the municipality and the county agree should be covered by the municipality's plan.³ County comprehensive plans cover the county's total unincorporated area, but plans for charter counties may include municipalities within their jurisdictions.⁴ Counties and municipalities may also enter into interlocal agreements with other counties or municipalities to exercise their planning powers.⁵

Each county and municipality must establish a local planning agency.⁶ The local planning agency is responsible for managing the comprehensive planning program.⁷ The duties of the local planning agency include:⁸

- Preparing the comprehensive plan and plan amendments;
- Monitoring the effectiveness and status of the comprehensive plan and recommending changes to the local governing body, including periodic evaluation and appraisal of the plan as required by law;⁹
- Reviewing proposed land development regulations and land development codes for consistency with the adopted comprehensive plans; and
- Performing any other functions, duties, and responsibilities assigned by the local governing body, general law, or special law.

The local governing body may designate itself as the local planning agency or assign the powers to a local planning commission, a planning department, or another body.¹⁰

¹ Section 163.3167(1), F.S.

² Section 163.3167(2), F.S. The Ready Creek Improvement District, an independent special district created by ch. 67-764, Laws of Fla., may exercise the powers of the act as if it were a municipality. S. 163.3167(6), F.S.

³ Section 163.3171(1), F.S.

⁴ Section 163.3171(2), F.S.

⁵ Section 163.3171(3), F.S.

⁶ Section 163.3174(1), F.S. If a county or municipality has entered into an interlocal agreement under s. 163.3171, F.S., to exercise its planning powers under the Community Planning Act, those counties and municipalities may establish a joint local planning agency.

⁷ Section 163.3174(4), F.S.

⁸ Section 163.3174(4)(a)-(d), F.S.

⁹ Section 163.3191, F.S.

¹⁰ Section 163.3174(1), F.S.

The Department of Economic Opportunity (DEO) serves as the state land planning agency.¹¹

Community Planning and Development

The Community Planning Act¹² also governs community and land development in Florida. The Community Planning Act details how local governments create, adopt, and maintain their local comprehensive plans, which address a broad array of property rights, land use, and planning aspects of the land area within their jurisdiction.¹³ A crucial aspect of a local government's community planning activities involves granting and denying rights related to real property use and development.

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."¹⁴ When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."¹⁵ Once a local government has officially granted or denied a development permit, the official action constitutes a development order.¹⁶ A development order vests certain rights related to the land.¹⁷

Development Orders in Newly Incorporated Municipalities

Municipalities established after the effective date of the Community Planning Act must prepare and adopt a comprehensive plan within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan. A municipal comprehensive plan adopted after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density¹⁸ and intensity¹⁹ approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.²⁰

¹¹ Section 163.3164(44), F.S.

¹² Part II of ch. 163, F.S.

¹³ Section 163.3167(1)(b), F.S.

¹⁴ Section 163.3164(14), F.S.

¹⁵ *Id.* at (16).

¹⁶ *See id.* at (15).

¹⁷ *See s.* 163.3167(3), F.S.

¹⁸ "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. Section 163.3164(12), F.S.

¹⁹ "Intensity" means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services. Section 163.3164(22), F.S.

²⁰ Section 163.3167(3), F.S.

Comprehensive Plans and Plan Amendments

Comprehensive plans are intended to provide for "orderly and balanced future economic, social, physical, environmental, and fiscal development" in a county or municipality.²¹ A comprehensive plan must take into account:²²

- Projected seasonal and permanent population growth;
- Current and existing public facility needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;
- Consideration of two planning periods, one covering at least five years and another covering at least 10 years; and
- A future land use plan element.

Comprehensive plan amendments fit into one of three categories based on both the size and nature of the area impacted by the proposed amendment. These categories include:²³

- General amendments subject to the expedited state review process;
- Small-scale development amendments subject to the small-scale review process; and
- Amendments subject to the state coordinated review process.²⁴

Expedited State Review Process

The expedited state review process is the default method for the consideration of local comprehensive plan amendments.²⁵ The process begins with a public hearing conducted by a county or municipality's governing body to approve of transmitting the proposed amendment for review.²⁶ Within 10 working days after the public hearing, the county or municipality must transmit the amendment, as well as any supporting documentation, to the following agencies for review:²⁷

- DEO;
- The appropriate regional planning council;
- The appropriate water management district;
- Department of Environmental Protection;
- Department of State;
- Department of Transportation;
- The commanding officer of any affected military installation listed in s. 163.3175, F.S.;
- Department of Education, if the plan amendment relates to public schools;
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, if the plan amendment is to a county comprehensive plan; and

²¹ Section 163.3177(1), F.S.

²² Section 163.3177(1), (3)-(6), F.S.

²³ Section 163.3184(2), F.S.

²⁴ Section 163.3184(2)(c), F.S. These amendments include amendments in areas of critical state concern pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose or amend a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on evaluation and appraisal pursuant to s. 163.3191, F.S., propose a development that is subject to state coordinated review pursuant to s. 380.06, F.S., and plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S.

²⁵ See s. 163.3184(2)(a), F.S.

²⁶ Section 163.3184(3)(a), (11)(a), F.S.

²⁷ Section 163.3184(1)(c), (3)(b)1., F.S.

- The county in which the municipality is located, if the plan amendment is to a municipal comprehensive plan.

The county or municipality also must transmit the amendment and supporting documentation to any other local government or government agency that made a written request with the governing body.²⁸ State agencies review the proposed amendment for any adverse impacts on important state resources and facilities that fall within their respective jurisdictions.²⁹ Regional planning councils consider any adverse impacts of the amendment on regional resources or facilities identified in the strategic regional policy plan and any extra-jurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region.³⁰ Comments from counties and municipalities are limited to the proposed amendment's impact on that local government's comprehensive plan.³¹

After receiving comments from the reviewing agencies and local governments, the county or municipality's governing body conducts a second public hearing to consider adopting the proposed amendment.³² If the proposed amendment is adopted, the county or municipality's governing body must submit the amendment, as well as any supporting documentation, to DEO and any other agency or local government that provided timely comments within 10 working days after the hearing.³³ DEO must review the amendment for any deficiencies and inform the county or municipality within five working days.³⁴ The amendment becomes effective 31 days after DEO notifies the local government that the plan amendment package is complete unless the amendment has been timely challenged, in which case the amendment does not become effective until DEO or the Administration Commission enters a final order determining the adopted amendment is in compliance.³⁵

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:³⁶

- The proposed amendment involves the use of 10 or fewer acres of land (20 acres in a rural area of opportunity),³⁷

²⁸ Section 163.3184(3)(b)1., F.S.

²⁹ Sections 163.3184(3)(b)2., (3)(b)4., F.S. DEO, as the state land planning agency, provides comments on the impacts of any important state resources and facilities outside of the jurisdiction of other commenting agencies.

³⁰ Section 163.3184(3)(b)3.a., F.S.

³¹ Section 163.3184(3)(b)3.b.-c., F.S.

³² Section 163.3184(3)(c)1., F.S. Except for amendments concerning developments of regional impact, an amendment is considered withdrawn if the public hearing is not conducted within 180 days after receiving agency comments.

³³ Section 163.3184(3)(c)2., F.S.

³⁴ Section 163.3184(3)(c)3., F.S.

³⁵ Section 163.3184(3)(c)4., F.S. The Administration Commission is composed of the Governor and Cabinet. Section 14.202, F.S.

³⁶ Section 163.3187(1)(a)-(d), (4), F.S., *see also* Dept. of Economic Opportunity, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date> (last visited Mar. 25, 2021).

³⁷ Section 163.3187(3), F.S.

- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that relate directly to, and are adopted simultaneously with, the small scale FLUM change;
- The property is not located in an area of critical state concern unless the project involves the construction of affordable housing units meeting statutory criteria;³⁸ and
- The amendment must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the county's governing body or municipality for approval.³⁹ Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.⁴⁰

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.⁴¹ The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.⁴²

If the ALJ finds that the amendment complies with the comprehensive plan, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission if the department determines the amendment is not in compliance.⁴³ If the ALJ does not find that the amendment complies, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the county or municipality's governing body.⁴⁴ If the amendment is challenged, the amendment may not become effective until DEO or the Administration Commission issues a final order determining the amendment complies with the overall comprehensive plan.

Rural Area of Opportunity

A Rural Area of Opportunity (RAO) is a rural community or a region comprised of rural communities designated by the Governor that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress.⁴⁵ The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.

³⁸ See s. 420.0004(3), F.S.

³⁹ Section 163.3187(2), F.S.

⁴⁰ Compare s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) with s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).

⁴¹ Section 163.3187(5)(a), F.S.

⁴² *Id.*

⁴³ Section 163.3187(5)(b), F.S.

⁴⁴ Section 163.3187(5)(c), F.S.

⁴⁵ Section 288.0656(2)(d), F.S. A "rural community" is defined as any county with a population of 75,000 or fewer; any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; any

The Governor may designate up to three RAO areas for five-year periods upon recommendation by the Rural and Economic Development Initiative (REDI).⁴⁶ These areas receive priority assignments for REDI, and the designation allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives. Currently, there are three designated RAO areas:⁴⁷

- Northwest RAO, consisting of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, as well as the area within the city limits of Freeport and in Walton County north of the Choctawhatchee Bay and the intercoastal waterway;
- South Central RAO, consisting of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, as well as the municipalities of Pahokee, Belle Glade, and South Bay in Palm Beach County and Immokalee in Collier County; and
- North Central RAO, consisting of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3167, F.S., to provide that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the municipality's comprehensive plan and land development regulations so long as the vested uses, density, and intensity are consistent with the municipality's comprehensive plan, and all existing concurrency obligations in the development order remain valid.

Section 2 amends s. 163.3187, F.S., to increase the maximum acreage for small-scale comprehensive plan amendments. The maximum acreage is increased from 10 acres to 50 acres generally. For small-scale comprehensive plan amendments within a rural area of opportunity, the bill increases the maximum acreage from 20 acres to 100 acres.

Section 3 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

municipality in a county that meets the aforementioned criteria; or any municipality or “unincorporated federal enterprise community” with a population of 25,000 or fewer and an employment base focused on traditional agriculture or resource-based industries located in a county not defined as rural and which suffers from three or more economic distress factors. Section 288.0656(2)(e), F.S.

⁴⁶ Section 288.0656(7)(a), F.S.

⁴⁷ Dept. of Economic Opportunity, *Rural Areas of Opportunity*, <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Mar. 25, 2021).

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 bill may reduce state government expenditures to the extent that agencies will no longer be required to review certain amendments that would previously have been subject to the expedited state review process. The bill may reduce local government expenditures to the extent that amendments that would previously have been subject to the expedited state review process would be eligible for review as small-scale development amendments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 163.3167 and 163.3187 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs on March 30, 2021:

The committee substitute clarifies that when a landowner elects to abandon a

development order and develop the vested density and intensity granted before the adoption of a municipality's comprehensive plan, all existing concurrency obligations in the development order remain valid.

B. Amendments:

None.

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



585848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment

Delete line 29
and insert:
plan and all existing obligations in the development order
regarding concurrency remain.

By Senator Perry

8-01062B-21

20211274__

1 A bill to be entitled
 2 An act relating to growth management; amending s.
 3 163.3167, F.S.; authorizing landowners with
 4 development orders existing before the incorporation
 5 of a municipality to elect to abandon such orders and
 6 develop the vested density and intensity contained
 7 therein under specified conditions; amending s.
 8 163.3187, F.S.; revising the required acreage
 9 thresholds under which a small scale development
 10 amendment may be adopted; providing an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Subsection (5) of section 163.3167, Florida
 15 Statutes, is amended to read:
 16 163.3167 Scope of act.—
 17 (5) Nothing in this act shall limit or modify the rights of
 18 any person to complete any development that has been authorized
 19 as a development of regional impact pursuant to chapter 380 or
 20 who has been issued a final local development order and
 21 development has commenced and is continuing in good faith. Any
 22 landowner with a development order existing before the
 23 incorporation of a municipality may elect to abandon the
 24 development order and develop the vested density and intensity
 25 contained therein pursuant to the municipality's comprehensive
 26 plan and land development regulations adopted pursuant to
 27 subsection (3) so long as the vested uses, density, and
 28 intensity are consistent with the municipality's comprehensive
 29 plan.

Page 1 of 3

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

8-01062B-21

20211274__

30 Section 2. Subsections (1) and (3) of section 163.3187,
 31 Florida Statutes, are amended to read:
 32 163.3187 Process for adoption of small scale ~~small-scale~~
 33 comprehensive plan amendment.—
 34 (1) A small scale development amendment may be adopted
 35 under the following conditions:
 36 (a) The proposed amendment involves a use of 50 ~~40~~ acres or
 37 fewer, ~~and~~—
 38 (b) The proposed amendment does not involve a text change
 39 to the goals, policies, and objectives of the local government's
 40 comprehensive plan, but only proposes a land use change to the
 41 future land use map for a site-specific small scale development
 42 activity. However, text changes that relate directly to, and are
 43 adopted simultaneously with, the small scale future land use map
 44 amendment shall be permissible under this section.
 45 (c) The property that is the subject of the proposed
 46 amendment is not located within an area of critical state
 47 concern, unless the project subject to the proposed amendment
 48 involves the construction of affordable housing units meeting
 49 the criteria of s. 420.0004(3), and is located within an area of
 50 critical state concern designated by s. 380.0552 or by the
 51 Administration Commission pursuant to s. 380.05(1).
 52 (3) If the small scale development amendment involves a
 53 site within a rural area of opportunity as defined under s.
 54 288.0656(2)(d) for the duration of such designation, the acreage
 55 ~~40-acre~~ limit listed in subsection (1) shall be increased by 100
 56 percent ~~to 20 acres~~. The local government approving the small
 57 scale plan amendment shall certify to the state land planning
 58 agency that the plan amendment furthers the economic objectives

Page 2 of 3

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

8-01062B-21

20211274

59 set forth in the executive order issued under s. 288.0656(7),
60 and the property subject to the plan amendment shall undergo
61 public review to ensure that all concurrency requirements and
62 federal, state, and local environmental permit requirements are
63 met.

64 Section 3. This act shall take effect July 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/31/21
Meeting Date

1330
Bill Number (if applicable)

358362
Amendment Barcode (if applicable)

Topic Ad Valorem Exemption Homes for

Name JEFFREY STARKEY

Job Title Pres. Capital Alliance GWP

Address 100 E Wynn

Phone 850 224 1600

2H FL 3230
City State Zip

Email JEFFREYSTARKEY@gnuc

Speaking: For Against Information

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

Representing Wardover Housing

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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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

SB 1330

Bill Number (if applicable)

Topic Ad Valorem Tax Exemption

Amendment Barcode (if applicable)

Name JEFFREY SHARKEY

Job Title CEO Capitol Alliance Group

Address 106 E College Ave S. 1110

Phone (850) 224-1660

Street

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Wendover Housing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1330

INTRODUCER: Community Affairs Committee and Senator Rodriguez

SUBJECT: Ad Valorem Tax Exemption for Nonprofit Homes for the Aged

DATE: April 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1330 revises eligibility for the ad valorem tax exemption for property used as a home for the aged by non-profit corporations to include property operated by a Florida limited partnership, the sole general partner of which is an entity wholly owned by a corporation not-for-profit.

The Revenue Estimating Conference estimates that the bill will reduce local government revenue by \$100,000 annually beginning in fiscal year 2022-2023.

The bill takes effect January 1, 2022.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.¹ The property appraiser annually determines the assessed or “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property,⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Ad Valorem Tax Exemption for Homes for the Aged

Florida law exempts from ad valorem taxation property used as a home for the aged by certain non-profit corporations.¹¹ In order to qualify for the exemption, the following criteria must be met:¹²

- The applicant for the exemption must be qualified as a 501(c)(3) exempt charitable organization under federal law by January 1 of the year it requests to be exempt from Florida ad valorem taxation; and is either:
 - A corporation not-for-profit pursuant to ch. 617, F.S.; or
 - A Florida limited partnership, the sole general partner of which is a corporation not-for-profit pursuant to ch. 617, F.S.;

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* Section 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. Sections 3(a), 6(c), art. VII, implemented by s. 196.1975, F.S.

¹² Section 196.1975, F.S.

- 75 percent of the occupants of the facility must be over the age of 62 years or be totally and permanently disabled; and
- Certain facilities must also acquire licensing by the Agency for Health Care Administration.¹³

Upon sufficient proof that the applicant meets the above criteria, the property appraiser will exempt the portions of the facility which are devoted exclusively to the conduct of religious services or the rendering of nursing or medical services.¹⁴

In addition, the property appraiser may exempt individual units or apartments in the facility if residency in those units or apartments is reserved for or restricted to, or the unit or apartment is occupied by, a permanent resident of the state who is:

- An individual with a gross income¹⁵ of no more than \$34,374 per year who is either at least 62 years of age or is totally and permanently disabled;
- A couple with a combined gross income of no more than \$38,590 per year, or the surviving spouse of such a couple, if the surviving spouse lived with the deceased at the time of the deceased's death in a home for the aged, at least one of whom must be at least 62 years of age or is totally and permanently disabled; or
- A totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S., who meets one of the above categories not including the income limitation.¹⁶

If any portion of the facility is used for a non-exempt purpose, those portions may be valued and placed upon the tax rolls separately from any portion entitled to the exemption.¹⁷ Common areas of the home are exempt from taxation as long as at least 25 percent of the units or apartments of the home are restricted to or are occupied by persons who meet the income requirements.¹⁸

In order to demonstrate to the property appraiser that the facility is qualified for the exemption, the facility must annually file an application for exemption with the property appraiser.¹⁹ The facility must also file an affidavit from each person residing in a unit or apartment in the facility that meets the disability or income requirements described above.²⁰ The person signing the affidavit must attest that he or she resides in the unit or apartment claiming the exemption and, in good faith, makes that unit or apartment his or her permanent residence.²¹

¹³ Sections 196.1975(1)-(2), F.S. Licensure by the Agency for Health Care Administration is required for facilities that furnish medical facilities or nursing services to residents or that qualifies as an assisted living facility under ch. 429, F.S. Sections 196.1975(2)(a)-(b), F.S.

¹⁴ Section 196.1975(3), F.S.

¹⁵ Social security benefits are considered gross income for the purposes of this exemption. Section 196.1975(6), F.S.

¹⁶ Section 196.1975(4)(a), F.S. Statute defines the maximum income limitation as \$7,000 (for individuals) or \$8,000 (for couples) in the year the provision was passed (1977), adjusted annually by the percentage change in U.S. Department of Labor's cost-of-living index. See Section 196.1975(4)(a)-(b), F.S. The values above reflect those present adjustments for 2021. Fla. Dept. of Revenue, *Cost of Living Adjustments*,

<https://floridarevenue.com/property/Documents/CostofLivingAdjust.pdf> (last accessed Mar. 4, 2021).

¹⁷ Section 196.1975(11), F.S.

¹⁸ Section 196.1975(8), F.S.

¹⁹ Section 196.1975(9)(b), F.S. This application is known as a DR-504HA form. Fla. Dept. of Revenue, *Property Tax Oversight Forms*, <https://floridarevenue.com/property/pages/forms.aspx> (last accessed Mar. 4, 2021).

²⁰ Section 196.1975(9)(b), F.S. This application is known as a DR-504S form.

²¹ *Id.*

III. Effect of Proposed Changes:

The bill amends s. 496.1975, F.S., to revise the eligibility for the ad valorem tax exemption for property used as a home for the aged by non-profit corporations to include property operated by a Florida limited partnership, the sole general partner of which is an entity wholly owned by a corporation not-for-profit under ch. 617, F.S.

The bill takes effect January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant fiscal impact, which for fiscal year 2020-2021, is forecast at \$2.2 million.²²

Under the bill, cities and counties may realize a reduction in ad valorem revenue as a result of the expansion of the exemption for homes for the aged. The Revenue Estimating Conference has determined the bill will reduce local government revenues by \$100,000 annually, beginning in fiscal year 2022-2023. Therefore, the fiscal impact of the bill on local governments appears to be insignificant.

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.

²² 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 March 10, 2021). \$2.2 Million is based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,925,785. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 29, 2021).

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

The Revenue Estimating Conference has determined that the bill will reduce local government revenue by \$100,000 annually beginning in fiscal year 2022-2023.²³

B. Private Sector Impact:

The bill will enable additional homes for the aged operated by not-for-profit corporations to qualify for the ad valorem tax exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.1975 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 Community Affairs on March 30, 2021:

The CS removes the provision reducing the minimum tenant age requirement for the ad valorem tax exemption for a unit or apartment.

B. Amendments:

None.

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

²³ Revenue Estimating Conference analysis of CS/HB 571, March 19, 2021, *available at*: http://www.edr.state.fl.us/content/conferences/revenueimpact/archives/2021/_pdf/Impact0319.pdf (list accessed March 31, 2021).



358362

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Rodriguez) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 29 - 55.

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete lines 12 - 13

and insert:

Section 1. Subsection (1) of section 196.1975, Florida Statutes, is amended to read:



358362

11
12
13
14
15
16

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

And the title is amended as follows:

Delete lines 6 - 8

and insert:

providing an effective date.

By Senator Rodriguez

39-00965-21

20211330__

A bill to be entitled

An act relating to ad valorem tax exemption for nonprofit homes for the aged; amending s. 196.1975, F.S.; exempting from ad valorem taxation certain entities wholly owned by a nonprofit corporation; revising the criteria that must be met by certain units or apartments in homes for the aged to be exempt from ad valorem taxation; providing an effective date.

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

Section 1. Subsection (1) and paragraph (a) of subsection (4) of section 196.1975, Florida Statutes, are amended to read:
196.1975 Exemption for property used by nonprofit homes for the aged.—Nonprofit homes for the aged are exempt to the extent that they meet the following criteria:

(1) The applicant must be a corporation not for profit pursuant to chapter 617 or a Florida limited partnership, the sole general partner of which is a corporation not for profit under pursuant to chapter 617 or an entity wholly owned by a corporation not for profit under chapter 617, and the corporation not for profit must have been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt charitable organization under ~~the provisions of~~ s. 501(c) (3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act.

(4) (a) After removing the assessed value exempted in

Page 1 of 2

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

39-00965-21

20211330__

subsection (3), units or apartments in homes for the aged shall be exempt only to the extent that residency in the existing unit or apartment of the applicant home is reserved for or restricted to or the unit or apartment is occupied by persons who have resided in the applicant home and in good faith made this state their permanent residence as of January 1 of the year in which exemption is claimed and who also meet the requirements set forth in one of the following subparagraphs:

1. Persons who have gross incomes of not more than \$7,200 per year and who are 55 ~~62~~ years of age or older.

2. Couples, one of whom must be 55 ~~62~~ years of age or older, having a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased at the time of the deceased's death in a home for the aged.

3. Persons who are totally and permanently disabled and who have gross incomes of not more than \$7,200 per year.

4. Couples, one or both of whom are totally and permanently disabled, having a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased at the time of the deceased's death in a home for the aged.

However, the income limitations do not apply to totally and permanently disabled veterans, provided they meet the requirements of s. 196.081.

Section 2. This act shall take effect January 1, 2022.

Page 2 of 2

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

Meeting Date

SB 1520

Bill Number (if applicable)

Topic Ancillary Property Rights (Community Affairs)

Amendment Barcode (if applicable)

Name French Brown

Job Title Lobbyist

Address 106 East College Avenue, Suite 1200

Phone 850-459-0992

Street

Tallahassee

FL

32301

Email fbrown@deanmead.com

City

State

Zip

Speaking: For Against Information

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

Representing Real Property, Probate, and Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1520

INTRODUCER: Judiciary Committee and Senator Boyd

SUBJECT: Ancillary Property Rights

DATE: March 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 amends real property law to specify that a utility easement is an interest in real property that must be recorded and may be transferred or assigned, and amends the Marketable Recordable Title Act (MRTA) to provide that it may extinguish certain covenants or restrictions related to zoning requirements or a building or development permit.

In general, an easement allows the holder of the easement the right to enter into a servient estate, which is land owned by another. A utility easement allows entry for the purpose of constructing or maintaining utilities serving the public. The holder of an easement has the right to do what is reasonably necessary to utilize the easement for its original purpose, but no more. The bill requires a utility easement to be recorded in the public records, allows the holder of the easement full property rights in the easement unless expressly provided otherwise in the easement, and provides that assignment of an easement is not an undue burden upon the servient estate.

MRTA simplifies property transactions and modernizes land use by eliminating property rights that are more than 30 years old and predate the root of the title of the property in question. There are, however, numerous exceptions to MRTA whereby a property right is not extinguished by MRTA. The bill amends MRTA to:

- Modify an exception to extinguishment to require that a general reference to a prior right must include an affirmative statement of intent to preserve such property right.
- Specify that MRTA may extinguish a covenant or restriction related to a zoning requirement, building permit, or development permit. However, this will not extinguish the underlying

zoning or building codes or ordinances; nor will it extinguish a covenant or restriction that says on its first page that it was required by local codes.

- Allow revitalization of a covenant or restriction that had been required by a government agency as a condition of a development permit.

The bill includes a statement that the changes to MRTA apply to all real property interests. A person who wishes to protect a property interest potentially extinguished by the bill has until July 1, 2022 to file a Statement of Marketable Title Action in the public records in order to preserve the property interest.

The bill is effective upon becoming law.

II. Present Situation:

Utility Easements

Ownership of real property includes many rights. Maybe one of the most important is the right to exclude others from entering onto the land. Like the other real property rights, the right to exclude others can be transferred in part to another individual or entity. Giving someone else the right to enter a specified portion of one's property for a specific use is known as granting an easement, and the real property subject to the easement is referred to as the servient estate.

A utility easement is a form of easement held by a utility company for the specific purpose of furnishing utilities, generally for benefit of society at large.

The law governing easements generally provides that an easement holder has the right to do what is reasonably necessary for the full enjoyment of the easement, but that the right must not be increased to any greater extent than reasonably necessary and contemplated at the time the easement was created.¹ The "holder of an electric transmission line easement may avail itself of modern inventions and improvements so long as such action is within the scope of the easement."² An easement, like any other contract, is construed according to its plain terms. "The scope of an easement is defined by what is granted, not by what is excluded, and all rights not granted are retained by the grantor. Likewise, the scope of an express easement for a stated purpose cannot be expanded to include any use merely because such use does not impose an added burden on the servient estate."³

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 "to simplify conveyances of real property, stabilize titles, and give certainty to land ownership."^{4,5} Specifically, MRTA extinguishes most rights in real property that are more than 30 years old based on the date of the

¹ *Crutchfield v. F.A. Sebring Realty Co.*, 69 So. 2d 328 (Fla. 1954).

² *Florida Power Corp. v. Silver Lake Homeowners Ass'n*, 727 So. 2d 1149, 1150 (Fla. 5th DCA 1999) (allowing electric utility to change from wood poles to stronger and larger steel poles).

³ *City of Orlando v. MSD-MATTIEK, L.L.C.*, 895 So. 2d 1127 (Fla. 5th DCA 2005)(it was an undue burden on the servient estate to allow installation of fiber optic lines along an electric easement)(internal citations omitted).

⁴ *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910, 914 (Fla. 3d DCA 2016).

⁵ The Marketable Record Title Act is ch. 712, F.S.

root of the title. The root of title “means any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.”⁶ Any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land that occurred prior to that record title. This allows a prospective buyer, for example, to rely on the first title transaction that occurred more than 30 years ago, together with all title transactions to date, as opposed to searching through decades of possible title transactions. Specifically, MRTA extinguishes the following rights, subject to exceptions:

[A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.⁷

MRTA includes a number of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument. One exception provides that MRTA does not extinguish any property right or title defect disclosed in an instrument recorded in the chain of title from the root forward. However, a general reference to the right or defect is insufficient notice to the title examiner, the reference must be made to the book and page, or to the name of the recorded plat.⁸

Section 712.04, F.S., lists the real property interests that are extinguished where MRTA applies. Unless one of the exceptions of s. 712.03, F.S., applies, a marketable record title is free and clear of all estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.

Property owners, particularly those with recorded covenants and restrictions designed to preserve the character of the neighborhood, were often dismayed in the past when they discovered that their neighborhood covenants and restrictions had been invalidated by the operation of MRTA. In response, MRTA was amended to allow for covenant revitalization. Different procedures apply, depending upon whether the covenants created a homeowners’ association. Section 712.12, F.S., governs covenant or restriction revitalization by parcel owners not subject to a homeowners’ association. It does not apply to a covenant or restriction required by a governmental agency as a condition of a development permit.

Save Calusa Trust

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of “whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA.”⁹ The court held that the 99-year restrictive covenant was not a title interest under MRTA, and thus was not subject to extinguishment by MRTA. The court reasoned that the

⁶ Section 712.01(6), F.S.

⁷ Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.

⁸ Section 712.03(1), F.S.

⁹ *Id.* at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.

restrictive covenant in question was an inseparable part of a governmental action to rezone the property at issue. The court concluded that, based on MRTA's language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.¹⁰

III. Effect of Proposed Changes:

Utility Easements

Section 1 of the bill creates s. 704.09, F.S., regarding utility easements. A utility easement is an easement, created by a written grant of easement, for the purpose of providing utility services such as water, wastewater, reclaimed water, natural gas, electricity, drainage, and other utility services.

The bill requires a utility easement to be recorded under the general recording statute, s. 95.01, F.S.

The bill provides that a utility easement may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by its grantee and its successors and assigns, unless otherwise expressly provided in the instrument by which it is created. The bill further provides that an assignment is not an undue burden upon the servient estate if the assignment is consistent with the terms set forth in the instrument creating the utility easement.

The Marketable Record Title Act

Section 2 of the bill amends the exception to MRTA at s. 712.03(1), F.S., for real property rights or title defects referenced in an instrument recorded after the root of title, to require that such instrument is not extinguished by MRTA if it either:

- Specifically references the official records book and page, instrument number, or plat name, of the pre-root instrument; or
- Generally references the estate, interest, easement or use restriction, together with an affirmative statement of intent that the property is subject to such estate, interest, easement or use restriction.

Section 3 of the bill amends the scope of real property rights that may be extinguished by MRTA, at s. 712.04, F.S., to specifically include covenants and restrictions, including any covenant or restriction that depends upon a zoning requirement, building permit, or development permit.

Section 3 also creates two exceptions to the otherwise broad scope of s. 712.04, F.S., to provide that MRTA does not alter or invalidate:

- A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or

¹⁰ *Id.* at 915-16.

- Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 4 amends s. 712.12, F.S., to allow covenant or restriction revitalization by parcel owners not subject to a homeowners' association where such covenant or restriction was required by a governmental agency as a condition of a development permit.

Section 5 provides an affirmative statement to declare that the amendments made to ss. 712.03, 712.04, and 712.12, F.S., pursuant to this bill are to provide clarification to already existing law. This clarification applies to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted after the effective date of the bill.

Section 6 requires that an individual who seeks to avoid losing a property interest because of the changes to MRTA in this bill file a notice in the public records no later than the earlier of the expiration of the interest or July 1, 2021. The form of notice is governed by s. 712.06, F.S.¹¹

Section 7 directs the Division of Law Revision to replace any language in the bill regarding "the effective date of this act" to the date that the bill becomes law.

Section 8 provides that the bill 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 identified.

¹¹ The notice must contain name and address of the claimant, name and address of the owner, legal description of the affected land, a statement of the legal claim, and the recording information for the document supporting the claim. The notice must be executed and recorded the same as a deed.

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

None.

B. Private Sector Impact:

Professionals working in the real estate and title industry may need to revise certain documents to clarify what property interests are part of the marketability in the MRTA.

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: 712.03, 712.04, and 712.12.

This bill creates section 704.09, 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 Judiciary on March 9, 2020:

The committee substitute removed telephone service from the description of a utility easement.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Boyd

590-02627-21

20211520c1

A bill to be entitled

An act relating to ancillary property rights; creating s. 704.09, F.S.; defining the term "utility easement"; providing that a utility easement is an interest in real property and subject to certain actions unless otherwise provided in the instrument creating the easement; providing that the easement is not an undue burden; amending s. 712.03, F.S.; revising rights that are not affected or extinguished by marketable record titles; amending s. 712.04, F.S.; revising what types of interests are extinguished by a marketable record title; providing construction; amending s. 712.12, F.S.; revising the definition of the term "covenant or restriction"; providing applicability; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 704.09, Florida Statutes, is created to read:

704.09 Utility easements.-

(1) For purposes of this section, the term "utility easement" means an easement, created by a written grant of easement, for the purpose of providing utility services such as water, wastewater, reclaimed water, natural gas, electricity, drainage, and other utility services.

Page 1 of 5

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

590-02627-21

20211520c1

(2) A utility easement is an interest in real property subject to s. 695.01. Unless otherwise expressly provided in the instrument by which it is created, a utility easement may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by its grantee and its successors and assigns. Provided the assignment is consistent with the terms set forth in the instrument creating the utility easement, the assignment is not an undue burden upon the servient estate.

Section 2. Subsection (1) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, ~~and~~ provided, however, that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of

Page 2 of 5

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

590-02627-21 20211520c1

59 ~~record or by name of recorded plat be made therein to a recorded~~
 60 ~~title transaction which imposed, transferred or continued such~~
 61 ~~easement, use restrictions or other interests; subject, however,~~
 62 ~~to the provisions of subsection (5).~~

63 Section 3. Section 712.04, Florida Statutes, is amended to
 64 read:

65 712.04 Interests extinguished by marketable record title.—
 66 Subject to s. 712.03, a marketable record title is free and
 67 clear of all estates, interests, claims, covenants,
 68 restrictions, or charges, the existence of which depends upon
 69 any act, title transaction, event, zoning requirement, building
 70 or development permit, or omission that occurred before the
 71 effective date of the root of title. Except as provided in s.
 72 712.03, all such estates, interests, claims, covenants,
 73 restrictions, or charges, however denominated, whether they are
 74 or appear to be held or asserted by a person sui juris or under
 75 a disability, whether such person is within or without the
 76 state, natural or corporate, or private or governmental, are
 77 declared to be null and void. However, this chapter does not
 78 affect any right, title, or interest of the United States,
 79 Florida, or any of its officers, boards, commissions, or other
 80 agencies reserved in the patent or deed by which the United
 81 States, Florida, or any of its agencies parted with title. This
 82 section may not be construed to alter or invalidate:

83 (1) A comprehensive plan or plan amendment; zoning
 84 ordinance; land development regulation; building code;
 85 development permit; development order; or other law, regulation,
 86 or regulatory approval, to the extent such law, regulation, or
 87 regulatory approval operates independently of matters recorded

590-02627-21 20211520c1

88 in the official records; or

89 (2) Any recorded covenant or restriction that on the face
 90 of the first page of the document states that it was accepted by
 91 a governmental entity as part of, or as a condition of, any such
 92 comprehensive plan or plan amendment; zoning ordinance; land
 93 development regulation; building code; development permit;
 94 development order; or other law, regulation, or regulatory
 95 approval.

96 Section 4. Paragraph (b) of subsection (1) of section
 97 712.12, Florida Statutes, is amended to read:

98 712.12 Covenant or restriction revitalization by parcel
 99 owners not subject to a homeowners' association.—

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

101 (b) "Covenant or restriction" means any agreement or
 102 limitation ~~imposed by a private party and not required by a~~
 103 ~~governmental agency as a condition of a development permit, as~~
 104 ~~defined in s. 163.3164, which is contained in a document~~
 105 recorded in the public records of the county in which a parcel
 106 is located and which subjects the parcel to any use restriction
 107 that may be enforced by a parcel owner.

108 Section 5. The amendments to ss. 712.03, 712.04, and
 109 712.12, Florida Statutes, in this act are intended to clarify
 110 existing law, are remedial in nature, and apply to all estates,
 111 interests, claims, covenants, restrictions, and charges, whether
 112 imposed or accepted before, on, or after the effective date of
 113 this act.

114 Section 6. A person with an interest in land which may
 115 potentially be extinguished by this act, and whose interest has
 116 not been extinguished before July 1, 2021, must file a notice

590-02627-21

20211520c1

117 pursuant to s. 712.06, Florida Statutes, by July 1, 2022, to
118 preserve such interest.

119 Section 7. The Division of Law Revision is directed to
120 replace the phrase "the effective date of this act" wherever it
121 occurs in this act with the date the act becomes a law.

122 Section 8. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1584
Bill Number (if applicable)

Meeting Date _____

Topic TALKSHOW OF REAL PROPERTY PLATFORMS

Amendment Barcode (if applicable) _____

Name RYAN PATMINTRA

Job Title GOVERNMENT RELATIONS

Address 307 W PARK AVE
Street

Phone 813-534-4827

TALLAHASSEE FL 32301
City State Zip

Email RYANPA@ZILLOWGROUP.COM

Speaking: For Against Information

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

Representing ZILLOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1584

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Taxation of Real Property Platform Transactions

DATE: April 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1584 provides that if a real property platform, as defined in the bill, purchases a single dwelling unit and sells the same property within 180 days for not more than 110 percent of the purchase price, documentary stamp taxes are assessed only on the difference between the sale price and purchase price.

The Revenue Estimating Conference has reviewed language substantively identical to CS/SB 1584 and determined that the bill will reduce state revenues by \$200,000, beginning in Fiscal Year 2021-2022, and at least \$200,000 every year thereafter.

The bill takes effect July 1, 2021.

II. Present Situation:

Documentary Stamp Tax

Chapter 201, F.S., levies an excise tax (called the documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (DOR) administers the provisions of that chapter,¹ including provisions governing the collection of documentary stamp

¹ Section 201.11, F.S.

taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

The DOR classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.² The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.³ The second tax rate is 35 cents per each \$100 of consideration, capped at \$2,450, for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁴

After certain required payments on debt service on bonds, documentary stamp taxes are deposited into various trust funds⁵ including the Land Acquisition Trust Fund, State Transportation Trust Fund, Grants and Donations Trust Fund, and the State Housing Trust Fund. All documentary stamp tax revenues, except those which are transferred to the Land Acquisition Trust Fund in compliance with the Florida Constitution, are subject to an 8 percent service charge,⁶ which is transferred to the General Revenue Fund.⁷ Additionally, the DOR is permitted to deduct the amount necessary to pay for the cost it incurs in collecting the revenues.

Miami-Dade County is authorized to charge a local surtax on documents except for those involving the sale or transfer of a single family home.⁸ The surtax must be used to fund local affordable housing plans. In Miami-Dade County the documentary stamp tax is 60 cents on each \$100, paid to the state, and a 45 cent per \$100 surtax on transactions other than those involving single family homes, paid to Miami-Dade County.

Real Property Platforms

“PropTech,” “property technology,” and “real estate technology” are emerging terms used to describe the application of information technology to real estate markets. This subset of financial technology aims to streamline transactions and eliminate paperwork for consumers. The umbrella terms might include 3d modeling spaces, market data collection, crowdfunding of real estate projects, and shared economy businesses such as Airbnb.⁹

Real estate platforms, one form of property technology, enable buyers and sellers to interact throughout the process of a real estate transaction without the need for physical presence. A real property platform might allow a seller to run a virtual open house, communicate with potential buyers, negotiate the sale price, and execute a sale, including producing required documents, all within a website or application.

² Florida Revenue Estimating Conference, *2020 Florida Tax Handbook*, at 77 (2020) available at: <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited March 29, 2021).

³ *Id.* See also s. 201.02(1), F.S.

⁴ *Id.*

⁵ Section 201.15, F.S.

⁶ Section 201.15, F.S.

⁷ Section 215.20, F.S.

⁸ Section 201.031, F.S.

⁹ See Jeff Pilch, *Proptech for the Real Estate Investor*, Motley Fool, Feb 04, 2021, available at: <https://www.fool.com/millionacres/real-estate-basics/real-estate-terms/proptech-for-the-real-estate-investor/> (last visited March 25, 2021)

The four biggest companies in this area, Compass, Opendoor, Redfin and Zillow, have a combined value of \$23 billion.¹⁰ Some property technology companies like these act as “instant buyers,” where they will make a cash offer to sellers immediately after a house has been listed for sale. These companies use data analytics and algorithms to appraise homes automatically and make an official offer on a house within hours of listing. If the offer is accepted, the company will hold the house while the original seller moves, and then sell the house on their platform.¹¹

One motivation for utilizing these systems is reducing fees associated with real estate transactions. In 2019, homeowners traded property worth \$1.5 trillion, and paid \$75 billion in transaction costs, including brokers’ fees between 5 and 6 percent of each transaction, taxes, and mortgage fees.¹² Real property platforms may help reduce brokers’ costs by allowing would-be buyers to browse the market in real time and without going through an agent. Real property platforms also charge fees, but offer a competitive alternative to the traditional real estate market.

III. Effect of Proposed Changes:

The bill amends s. 201.02, F.S., first defining the term “real property platform” to include a publicly-traded company operating an internet website or application which:

- Disseminates residential property information to consumers through the website or application; and
- Facilitates real property transactions by enabling consumers to purchase, sell, or rent residential property.

“Affiliated group of corporations” is defined to mean two or more corporations which constitute an affiliated group of corporations as defined in s. 1504(a) of the Internal Revenue Code, regardless of whether such group elects to file a consolidated return pursuant to s. 220.131, F.S.

The bill provides that when a real property platform or an affiliated group of corporations of the real property platform receives a conveyance or vested interest (purchases) a residential property and subsequently sells the same interest in the property in an arm’s length transaction, documentary stamp taxes are only imposed on the difference between the sale price and purchase price if the real property platform:

- Sells a single-unit residential property classified as a single family or condominium;
- Sells the property within 180 calendar days immediately following the original purchase;
- Does not use the property as a home, residence, sleeping place, or dwelling unit other than to allow a short-term seller holdover arrangement incidental to the sale of the residential property; and
- Receives not more than 110 percent of the original purchase price for the subsequent sale.

The bill takes effect July 1, 2021.

¹⁰ *Technology is Poised to Upend America’s Property Market*, The Economist, Feb. 15, 2020, available at: <https://www.economist.com/finance-and-economics/2020/02/15/technology-is-poised-to-upend-americas-property-market> (last accessed March 26, 2021).

¹¹ *Id.*

¹² *Id.*

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

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

The Revenue Estimating Conference has reviewed language substantively identical to CS/SB 1584 and determined that the bill will reduce state revenues by \$200,000, beginning in Fiscal Year 2021-2022, and at least \$200,000 every year thereafter.¹³

B. Private Sector Impact:

Real property platform providers will benefit from reduced documentary stamp taxes owed on certain real estate transactions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

¹³ Revenue Estimating Conference analysis of proposed amendment to HB 623, *available at*: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page205-210.pdf (last accessed March 31, 2021).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 201.02 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on March 30, 2021:

The CS:

- Narrows the term “real property platform” to require it be a publically traded company;
- Provides that the tax exemption only applies to arm’s length deals for single dwelling units;
- Provides that the tax exemption applies to sales as well as other forms of property interest transfer; and
- Otherwise clarifies the exemption without changing the substantive effect of the bill.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 16 - 46

and insert:

(12) (a) For purposes of this subsection, the term "affiliated group of corporations" has the same meaning as in s. 220.03(1) (b), regardless of whether such group elects to file a consolidated return pursuant to s. 220.131.

(b) For purposes of this subsection, the term "real property platform" means a corporation whose shares are publicly



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11 traded on a recognized stock exchange located in the United
12 States and that operates an Internet website or Internet
13 application that:

14 1. Disseminates residential property information to
15 consumers through the website or application; and

16 2. Facilitates real property transactions to enable
17 consumers to purchase and sell residential property.

18 (c) For the conveyance of or vesting of interest in a
19 residential property that was previously conveyed to, or an
20 interest in which was vested in, a real property platform or an
21 affiliated group of corporations of the real property platform,
22 to or in an unrelated subsequent purchaser in an arm's length
23 transaction, the consideration for the tax imposed by this
24 section shall be limited to the difference between the
25 consideration paid by the real property platform or an
26 affiliated group of corporations of the real property platform
27 for such residential property and the consideration paid to the
28 real property platform or an affiliated group of corporations of
29 the real property platform by the subsequent purchaser for the
30 property, if the real property platform or an affiliated group
31 of corporations of the real property platform does all of the
32 following:

33 1. Conveys or vests an interest in the residential property
34 classified as single family or condominium pursuant to s.
35 195.073(1)(a)1. or 4. which is a single dwelling unit.

36 2. Conveys or vests an interest in the residential property
37 to the unrelated subsequent purchaser within 180 calendar days
38 immediately following the date on which such property was
39 conveyed to, or interest in such property was vested in, the



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40 real property platform or an affiliated group of corporations of
41 the real property platform.

42 3. Does not use the residential property as a home,
43 residence, or sleeping place or as a dwelling unit as defined in
44 s. 83.43(2) while it owns the real property, other than to allow
45 a short-term seller holdover arrangement incidental to the sale
46 of the residential property.

47 4. Receives consideration for conveyance of, or for vesting
48 of interest in, the residential property from the unrelated
49 subsequent purchaser in an amount no greater than 110 percent of
50 the amount of the consideration paid by the real property
51 platform or an affiliated group of corporations of the real
52 property platform for the residential property.

53
54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete lines 4 - 7

57 and insert:

58 terms "affiliated group of corporations" and "real
59 property platform"; providing a methodology to be used
60 in determining documentary stamp taxes due for certain
61 transactions by real property platforms or affiliated
62 groups of corporations involving residential property
63 which meet specified criteria;

By Senator Gruters

23-00837B-21

20211584__

A bill to be entitled

An act relating to taxation of real property platform transactions; amending s. 201.02, F.S.; defining the term "real property platform"; providing a methodology to be used in determining documentary stamp taxes due if a real property platform purchases and sells residential property within a specified timeframe; providing an effective date.

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

Section 1. Subsection (12) is added to section 201.02, Florida Statutes, to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(12) (a) For purposes of this subsection, the term "real property platform" means a company that operates an Internet website or application that does all of the following:

1. Disseminates residential property information to consumers through the platform.

2. Facilitates real property transactions by enabling consumers to purchase, sell, or rent residential property.

3. Purchases and assumes title itself, or through an affiliate, to residential property without taking residence of the property, with the intent to sell the property to a third party.

(b) If a real property platform purchases residential property and sells the residential property within 180 calendar days immediately following the date of purchase of the property,

Page 1 of 2

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

23-00837B-21

20211584__

through itself or an affiliate, documentary stamp taxes:

1. Shall be assessed on the difference between the recorded price the real property platform paid to purchase the property and the recorded sales price paid by the subsequent purchaser, if such difference is greater than the original purchase price of the property but does not exceed 10 percent of the original purchase price.

2. Shall be assessed on the recorded sales price paid by the subsequent purchaser, if the difference between the recorded price the real property platform paid to purchase the property and the recorded sales price paid by the subsequent purchaser is greater than the original purchase price and exceeds 10 percent of the original purchase price.

3. May not be assessed on the sale of the property if the recorded sales price paid by the subsequent purchaser is equal to or less than the recorded price paid by the real property platform to purchase the property.

Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21
Meeting Date

1876
Bill Number (if applicable)

Topic Harris Act

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St. Suite 300
Street

Phone 222-7500

Tallahassee FL 32301
City State Zip

Email garyh@hgsllaw.com

Speaking: For Against Information

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

Representing Association of Florida Community Developers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/21

Meeting Date

1876

Bill Number (if applicable)

Topic Relief from Burdens on Deal Property Rights

Amendment Barcode (if applicable)

Name Ida V. Eskaman

Job Title

Address Street

Phone 4073764801

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21

Meeting Date

1876

Bill Number (if applicable)

Topic Relief from Burdens on Real Property Rights

Amendment Barcode (if applicable)

Name Bob McKee

Job Title Deputy Director of Public Policy

Address 100 S Monroe

Phone (850) 922-4300

Street

Tallahassee

FL

32308

Email bmckee@fl-counties.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE
APPEARANCE RECORD

3/30/21

Meeting Date

SB 1876

Bill Number (if applicable)

Topic Relief from Burdens on Real Property Rights

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

Meeting Date

1876

Bill Number (if applicable)

Topic Relief from Burdens on Real Property Rights

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757

Phone (850)-701-3676

Street

Tallahassee

FL

32301

Email dcruz@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/21

Meeting Date

1876

Bill Number (if applicable)

Topic Relief from Burdens on Real Prop

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Pl

Street

Phone 904-671-4068

St Augustine FL 32080

City

State

Zip

Email jwest@1000fof.org

Speaking: For Against Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21 CA 3:30 A2

Meeting Date

1876

Bill Number (if applicable)

Topic Relief from Burdens on Real Property Rights

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

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Tallahassee

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32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/30/20

Meeting Date

1876

Bill Number (if applicable)

Topic Property Rights

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Director of Legislative Aff.

Address 310 W College Ave

Phone 222-2557

Street

Tallahassee

City

FL

State

32301

Zip

Email adam.basford@fla.gov

Speaking: For Against Information

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

Representing FL Farm Bureau

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1876

INTRODUCER: Judiciary Committee and Senator Albritton

SUBJECT: Relief from Burdens on Real Property Rights

DATE: March 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1876 amends the Bert J. Harris, Jr., Private Property Rights Protection Act and the Florida Land Use and Environmental Dispute Resolution Act. Both acts provide procedures and remedies to land owners whose property is inordinately burdened by a local government regulation. In the Bert Harris Act, the definitions of an “action of a governmental entity” is revised to include government actions that affect “real property including acting on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.” The term “real property” is amended to mean, in part, land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including other relevant interests.

The bill also revises the definition of “land” or “real property” in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act.

Additionally, the bill revises the Bert Harris Act to:

- Reduce the timeframe under which a claimant must notify the government before filing an action;
- Specify that written settlement offers are presumed to protect the public interest;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Extend the point from which a prevailing claimant may recover attorney fees and costs; and

- Authorize a property owner, under specified conditions, to notify the government that he or she deems a law or regulation's impact on his or her real property to be restrictive of allowable uses and the property owner is not required to formally pursue an application for a development order or permit before bringing a claim.

The bill also allows a property owner to challenge an unlawful government exaction without waiting for a written notice of exaction when a local government is poised to impose an exaction upon his or her property.

The bill takes effect July 1, 2021.

II. Present Situation:

Both the Federal Constitution and State Constitution guarantee that a person's private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall "be taken for public use without just compensation." Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.¹

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Legislature enacted the "Bert J. Harris, Jr., Private Property Rights Protection Act" in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- "As-applied" challenges for specific government actions; and
- Challenges that are not based on temporary impacts.²

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking³ under either the State Constitution or the United States Constitution. The Legislature declared that there is "an important state interest in protecting the interests of private property owners from those inordinate burdens." Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.⁴

¹ FLA. CONST. art. X, s. 6.

² W. Thomas Hawkins, *Land Use Law in Florida*, 17-3 (Routledge, forthcoming June 2021).

³ A "taking" is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner's rights. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁴ Section 70.001(1), F.S.

The phrases “inordinate burden” and “inordinately burdened” mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.⁵

Presuit Notice

A property owner who seeks compensation under the Harris Act must present a written claim to the head of the government entity at least 150 days before filing an action. If the property in question is agricultural, the notice period is 90 days. In addition to the claim, the property owner must submit a valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.^{6,7} If other parties are involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner’s property.⁸

The Government Must Make a Written Settlement Offer

During the 150 or 90 day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.⁹

⁵ Section 70.001(3)(e)1., F.S. The definition further explains in s. 70.001(3)(e)2, F.S., what the terms do not include with regard to other impacts.

⁶ Section 70.001(4)(a), F.S.

⁷ The appraisal should contain valuations of the property both before and after the government’s restriction was imposed. This will enable the government to adequately evaluate the property owner’s potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6, The Florida Bar, 2018 Florida Real Property Litigation (2018), available through Westlaw, <https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingDoc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem>.

⁸ Section 70.001(4)(b), F.S.

⁹ Section 70.001(4)(c), F.S.

If the Government Offer is Rejected; Timeframe for Filing a Lawsuit

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.¹⁰ A cause of action may not be filed more than 1 year after a law or regulation is “first applied” by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.¹¹

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner’s property. If the court determines that an inordinate burden was imposed, the court must also determine the percentage of responsibility each governmental entity must bear.¹² The circuit court must impanel a jury to determine the amount of compensation.¹³

Recovery of Reasonable Costs and Attorney Fees

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.¹⁴

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

- The property owner prevails; and
- The court determines that the government’s settlement offer did not constitute a bona fide offer which reasonably would have resolved the claim during the 90 or 150 day notice-period.¹⁵

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 or 150 day notice-period.¹⁶

Governmental Exactions***Background of Prohibited Exactions***

The United States Supreme Court issued a land-use decision in 2013, *Koontz v. St. Johns River Water Management District*,¹⁷ a case that arose in Florida. Mr. Koontz, the land owner, sought to develop a portion of his property that consisted mainly of wetlands. He offered to mitigate the

¹⁰ Section 70.001(5)(b), F.S.

¹¹ Section 70.001(11), F.S.

¹² Section 70.001(6)(a), F.S.

¹³ Section 70.001(6)(b), F.S.

¹⁴ Section 70.001(6)(c)3., F.S.

¹⁵ Section 70.001(6)(c)1., F.S.

¹⁶ Section 70.001(6)(c)2., F.S.

¹⁷ *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

adverse environmental effects of his development proposal by deeding a conservation easement to the St. Johns River Water Management District on nearly three-quarters of his remaining property. The district rejected his proposal and told him that his construction permit would be approved *only if* he agreed to reduce the size of his development and, among other things, deed to the district a conservation easement on the resulting larger remainder of his property *or* he agreed to hire contractors to make improvements on district-owned wetlands located several miles away. Mr. Koontz sued the district under s. 373.617, F.S., which allows a property owner to recover money damages if a government action related to land-use permitting constitutes a taking without just compensation, which is an unreasonable exercise of the state's police power.

The Court held that a government cannot deny a land-use permit based upon a landowner's refusal to agree to the government's demands to either turn over property or pay money to the government *unless* there is an essential nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use. The Court's decision was based upon a violation of the "unconstitutional condition" doctrine which precludes the government from burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them. In this particular case, the constitutional right burdened was the right to compensation when private property is taken for public use. The Court explained that "Extortionate demands for property in the land-use permitting context" violate the Fifth Amendment Takings Clause "not because they take property but because they impermissibly burden the right not to have property taken without just compensation."¹⁸

The Court held that, even though the district's conditions unconstitutionally burdened the landowner's Fifth Amendment rights, a constitutional taking did not occur. Instead, the Court left it up to the states to determine what remedies would be available to a landowner who was subject to an unconstitutional demand where no actual taking has occurred. The Court wrote:

Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy* – just compensation – only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action – whether state or federal – on which the landowner relies.¹⁹

2015 Legislative Response

The Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a "prohibited exaction."²⁰ Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner's proposed use of real property that does not have "an essential nexus to a legitimate public purpose and is not roughly proportionate to

¹⁸ *Id.* at 607.

¹⁹ *Id.* at 608-609.

²⁰ Chapter 2015-142, s. 2, Laws of Fla.

the impacts of the proposed use that the governmental entity” is seeking to avoid, minimize, or mitigate.²¹

Presuit Notice and Prohibition against Waivers

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.²²

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.²³

Burden of Proof

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid. The burden of proving damages that result from the prohibited exaction rests upon the property owner.²⁴

Attorney Fees and Costs

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.²⁵

Florida Land Use and Environmental Dispute Resolution Act

When the Legislature adopted the Bert Harris Act in 1995, it also created the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA) in the same chapter. The FLUEDRA is codified in s. 70.51, F.S., and is designed to encourage dispute resolution between real property²⁶ owners and government entities using a special magistrate in an informal hearing.²⁷ The FLUEDRA provides an informal mechanism for a property owner to challenge a governmental action infringing on his or her property without filing a lawsuit.

²¹ Section 70.45(1)(c), F.S.

²² Section 70.45(2), F.S.

²³ Section 70.45(3), F.S.

²⁴ Section 70.45(4), F.S.

²⁵ Section 70.45(5), F.S.

²⁶ “Real property” or “land” means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest. Section 70.51(2)(g), F.S.

²⁷ See s. 70.51, F.S.

The FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.²⁸ Under the FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her real property may, within 30 days after receiving the notice or order, file a request for relief with the government that issued the notice or order.²⁹ The government must forward the request to a special magistrate,³⁰ who must hold a hearing within 45 days after receiving the request for relief.³¹ The special magistrate's primary role is to facilitate a resolution of the conflict between the property owner and government without involving the courts. The hearing is open to the public and does not require the use of an attorney.³² In this role, the special magistrate acts as a "facilitator or mediator."³³

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner's real property, based on a list of statutory guidelines.³⁴ Within 14 days after the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.³⁵ If the special magistrate finds that the government action does not unreasonably or unfairly burden the use of the property, the property owner may still file suit or pursue other remedies.³⁶ If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend one or more alternatives that allow for reduced government restraints on the property.³⁷

The government must respond within 45 days after receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.³⁸ If the government accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.³⁹

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.⁴⁰ The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.⁴¹

²⁸ Section 70.51(24), F.S.

²⁹ Section 70.51(3) and (4), F.S.

³⁰ A "special magistrate" is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and powers; and the law governing the same. Section 70.51(2)(c) and (4), F.S.

³¹ Section 70.51(15)(a), F.S.

³² See s. 70.51(17)(a), F.S.

³³ *Id.*

³⁴ Section 70.51(17)(b) and (18), F.S.

³⁵ Section 70.51(19), F.S.

³⁶ Section 70.51(19)(a), F.S.

³⁷ Section 70.51(19)(b), F.S.

³⁸ Section 70.51(21), F.S.

³⁹ Section 70.51(22), F.S.

⁴⁰ Section 70.51(25), F.S.

⁴¹ Section 70.51(23), F.S.

III. Effect of Proposed Changes:

The bill makes several changes to the Bert Harris Act, amends the governmental exactions statute, and revises one definition in the Florida Land Use and Environmental Dispute Resolution Act.

Bert Harris Act Changes (Section 1)

The Bert Harris Act is amended to:

- Revise the definition of an “action of a governmental entity” to include specific government actions that affect real property including acting on an application or permit or adopting or enforcing “any ordinance, resolution, regulation, rule, or policy.”
- Revise the term “real property” to mean land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including any other relevant interests in the real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.
- Reduce the pre-suit dispute resolution period for nonagricultural properties to 90 days from 150 days. This is accomplished by eliminating the distinction between agricultural properties and other properties. (s. 70.001(4), F.S.)
- Specify that settlement offers are presumed to protect the public interest. This change appears to reverse a 2016 Fifth District Court of Appeal decision, *Rainbow River Conservation, Inc. v. Rainbow River Ranch, LLC*,⁴² in which the court held that a trial court was required to make findings regarding whether a settlement protected public interest and property before approving a settlement between a property owner and government entities.
- Allow a property owner the choice of having the court, rather than a jury, determine damages.
- Allow a property owner who prevails in an action to recover reasonable costs and attorney fees incurred in litigation from the date of the presentation of the claim to the head of the governmental entity, as opposed to the date the action is filed in court. The net effect of this change will be to permit a prevailing plaintiff to recover more in attorney fees from the government because the property owner will be recovering attorney fees from an earlier period in time and for additional work in preparing the cause of action for court. This revision also deletes the requirement that the court, in awarding reasonable costs and attorney fees, determine that the government’s settlement offer did not constitute a bona fide offer to the property owner which would have resolved the claim during the notice period.

The bill also provides that if proper notice is not provided to a property owner after a law or regulation’s enactment, the property owner may, *at any time after enactment*, notify the head of the government in writing by certified mail and e-mail, if available, that the property owner deems the law or regulation’s impact on the property owner’s real property to be clear and unequivocal in its terms and, as such, restrictive of allowable uses. The government then has 45 days from receipt of the notice to respond in writing by certified mail and e-mail, if available, to describe the limitations imposed on the property by the law or regulation. The property owner is not subsequently required to formally pursue an application for a development order,

⁴² *Rainbow River Conservation, Inc. v. Rainbow River Ranch*, 189 So. 3d 312 (Fla. 5th DCA 2016).

development permit, or building permit to bring a claim under the Bert Harris Act, but any claim must be filed within one year after the date the property owner receives the government's response.

Finally, the bill specifies that the changes to this section, except for the changes made to the definitions, apply only to Bert Harris Act claims brought in response to government actions taken on or after July 1, 2021, pursuant to language in section 3.

Governmental Exactions (Section 2)

This provision permits a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. The property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

The changes in the bill to the governmental exaction statute apply to claims that are made in response to actions taken by governmental entities on or after July 1, 2021, pursuant to language in section 3.

Florida Land Use and Environmental Dispute Resolution Act (Section 4)

The bill amends the definition of "land" or "real property" to match, by cross-reference, the newly amended definition of "real property" in the Bert Harris Act.

"WHEREAS" Clauses

The bill contains five "Whereas" clauses. The first three clauses recognize that the Bert J. Harris, Jr., Private Property Rights Protection Act was enacted in 1995, that the state has historically recognized subsurface estates, and that the bill clarifies the definition of property to preserve the original intent of the act. The final two clauses recognize that the state has an interest in the timely resolution of claims brought under the act, and that landowners and governmental entities benefit by knowing when a claim brought under the act may be asserted to avoid unnecessary future litigation.

The bill is effective July 1, 2021.

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:

Property owners will likely be able to have more freedom to develop and use their real property and generate income by doing so. Alternatively, property owners will have a better chance at receiving compensation for regulatory burdens imposed on their property.

C. Government Sector Impact:

CS/SB 1876 might have a financial impact on local governments by making it easier for a property owner to challenge a local government regulation that burdens his or her property and increasing the amount of attorney fees and costs that a local government must pay to a property owner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001, 70.45, and 70.51.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 22, 2021:

The committee substitute adds the substance of SB 1380 to SB 1876, but then removes the previous revisions in SB 1876 pertaining to the Florida Land Use and Environmental Dispute Resolution Act, except for the definition of “land” or “real property.” The

committee substitute also adds five “Whereas” clauses that were not contained in either 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.

By the Committee on Judiciary; and Senator Albritton

590-03184-21

20211876c1

1 A bill to be entitled
 2 An act relating to relief from burdens on real
 3 property rights; amending s. 70.001, F.S.; revising
 4 the definitions of the terms "action of a governmental
 5 entity" and "real property"; revising notice of claim
 6 requirements for property owners; creating a
 7 presumption that certain settlement offers protect the
 8 public interest; specifying that property owners
 9 retain the option to have a court determine awards of
 10 compensation; authorizing property owners to bring
 11 claims against governmental entities in certain
 12 circumstances; providing that property owners are not
 13 required to submit formal development applications or
 14 proceed through formal application processes to bring
 15 claims in specified circumstances; amending s. 70.45,
 16 F.S.; defining the terms "imposed" or "imposition";
 17 authorizing property owners to bring actions to
 18 declare prohibited exactions invalid; providing
 19 applicability; amending s. 70.51, F.S.; revising the
 20 definition of the terms "land" or "real property";
 21 providing an effective date.

22
 23 WHEREAS, the Legislature enacted the Bert J. Harris, Jr.,
 24 Private Property Rights Protection Act in 1995 to create a new
 25 cause of action to protect private property rights, and

26 WHEREAS, this state has historically defined and recognized
 27 property rights to include subsurface estates consistent with

28 *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and

29 WHEREAS, this bill clarifies the definition of property in

Page 1 of 12

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

590-03184-21

20211876c1

30 the act so that the original intent of the act is preserved and
 31 the act protects the property rights of all landowners in this
 32 state, and

33 WHEREAS, this state has an additional interest in the
 34 timely resolution of claims which are brought under the act, and

35 WHEREAS, landowners and governmental entities benefit
 36 equally by knowing when a claim under the act may be asserted so
 37 as to avoid unnecessary future litigation, NOW, THEREFORE,

38

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

40

41 Section 1. Paragraphs (d) and (g) of subsection (3),
 42 subsections (4), (5), and (6), and paragraph (a) of subsection
 43 (11) of section 70.001, Florida Statutes, are amended to read:

44 70.001 Private property rights protection.—

45 (3) For purposes of this section:

46 (d) The term "action of a governmental entity" means a
 47 specific action of a governmental entity which affects real
 48 property, including acting ~~action~~ on an application or permit or
 49 adopting or enforcing any ordinance, resolution, regulation,
 50 rule, or policy.

51 (g) The term "real property" means land and includes any
 52 surface, subsurface, or mineral estates and any appurtenances
 53 and improvements to the land, including any other relevant
 54 interest in the real property in which the property owner has a
 55 relevant interest. The term includes only parcels that are the
 56 subject of and directly impacted by the action of a governmental
 57 entity.

58 (4) (a) Not fewer less than 90 150 days before ~~prior to~~

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59 filing an action under this section against a governmental
 60 entity, a property owner who seeks compensation under this
 61 section must present the claim in writing to the head of the
 62 governmental entity, ~~except that if the property is classified~~
 63 ~~as agricultural pursuant to s. 193.461, the notice period is 90~~
 64 ~~days.~~ The property owner must submit, along with the claim, a
 65 bona fide, valid appraisal that supports the claim and
 66 demonstrates the loss in fair market value to the real property.
 67 If the action of government is the culmination of a process that
 68 involves more than one governmental entity, or if a complete
 69 resolution of all relevant issues, in the view of the property
 70 owner or in the view of a governmental entity to whom a claim is
 71 presented, requires the active participation of more than one
 72 governmental entity, the property owner shall present the claim
 73 as provided in this section to each of the governmental
 74 entities.

75 (b) The governmental entity shall provide written notice of
 76 the claim to all parties to any administrative action that gave
 77 rise to the claim, and to owners of real property contiguous to
 78 the owner's property at the addresses listed on the most recent
 79 county tax rolls. Within 15 days after the claim is presented,
 80 the governmental entity shall report the claim in writing to the
 81 Department of Legal Affairs, and shall provide the department
 82 with the name, address, and telephone number of the employee of
 83 the governmental entity from whom additional information may be
 84 obtained about the claim during the pendency of the claim and
 85 any subsequent judicial action.

86 (c) During the 90-day-notice period ~~or the 150-day notice~~
 87 ~~period~~, unless extended by agreement of the parties, the

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88 governmental entity shall make a written settlement offer to
 89 effectuate:
 90 1. An adjustment of land development or permit standards or
 91 other provisions controlling the development or use of land.
 92 2. Increases or modifications in the density, intensity, or
 93 use of areas of development.
 94 3. The transfer of developmental rights.
 95 4. Land swaps or exchanges.
 96 5. Mitigation, including payments in lieu of onsite
 97 mitigation.
 98 6. Location on the least sensitive portion of the property.
 99 7. Conditioning the amount of development or use permitted.
 100 8. A requirement that issues be addressed on a more
 101 comprehensive basis than a single proposed use or development.
 102 9. Issuance of the development order, a variance, a special
 103 exception, or any other extraordinary relief.
 104 10. Purchase of the real property, or an interest therein,
 105 by an appropriate governmental entity or payment of
 106 compensation.
 107 11. No changes to the action of the governmental entity.
 108
 109 If the property owner accepts a settlement offer, ~~either~~ before
 110 or after filing an action, the governmental entity may implement
 111 the settlement offer by appropriate development agreement; by
 112 issuing a variance, a special exception, or any other
 113 extraordinary relief; or by any other appropriate method,
 114 subject to paragraph (d).
 115 (d)1. When a governmental entity enters into a settlement
 116 agreement under this section which would have the effect of a

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117 modification, variance, or a special exception to the
 118 application of a rule, regulation, or ordinance as it would
 119 otherwise apply to the subject real property, the relief granted
 120 shall protect the public interest served by the regulations at
 121 issue and be the appropriate relief necessary to prevent the
 122 governmental regulatory effort from inordinately burdening the
 123 real property. Settlement offers made pursuant to paragraph (c)
 124 shall be presumed to protect the public interest.

125 2. When a governmental entity enters into a settlement
 126 agreement under this section which would have the effect of
 127 contravening the application of a statute as it would otherwise
 128 apply to the subject real property, the governmental entity and
 129 the property owner shall jointly file an action in the circuit
 130 court where the real property is located for approval of the
 131 settlement agreement by the court to ensure that the relief
 132 granted protects the public interest served by the statute at
 133 issue and is the appropriate relief necessary to prevent the
 134 governmental regulatory effort from inordinately burdening the
 135 real property.

136
 137 This paragraph applies to any settlement reached between a
 138 property owner and a governmental entity regardless of when the
 139 settlement agreement was entered so long as the agreement fully
 140 resolves all claims asserted under this section.

141 (5) (a) During the 90-day-notice period ~~or the 150-day-~~
 142 ~~notice period~~, unless a settlement offer is accepted by the
 143 property owner, each of the governmental entities provided
 144 notice pursuant to subsection (4) ~~paragraph (4) (a)~~ shall issue a
 145 written statement of allowable uses identifying the allowable

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146 uses to which the subject property may be put. The failure of
 147 the governmental entity to issue a statement of allowable uses
 148 during the applicable 90-day-notice period ~~or 150-day-notice~~
 149 ~~period~~ shall be deemed a denial for purposes of allowing a
 150 property owner to file an action in the circuit court under this
 151 section. If a written statement of allowable uses is issued, it
 152 constitutes the last prerequisite to judicial review for the
 153 purposes of the judicial proceeding created by this section,
 154 notwithstanding the availability of other administrative
 155 remedies.

156 (b) If the property owner rejects the settlement offer and
 157 the statement of allowable uses of the governmental entity or
 158 entities, the property owner may file a claim for compensation
 159 in the circuit court, a copy of which shall be served
 160 contemporaneously on the head of each of the governmental
 161 entities that made a settlement offer and a statement of
 162 allowable uses that was rejected by the property owner. Actions
 163 under this section shall be brought only in the county where the
 164 real property is located.

165 (6) (a) The circuit court shall determine whether an
 166 existing use of the real property or a vested right to a
 167 specific use of the real property existed and, if so, whether,
 168 considering the settlement offer and statement of allowable
 169 uses, the governmental entity or entities have inordinately
 170 burdened the real property. If the actions of more than one
 171 governmental entity, considering any settlement offers and
 172 statement of allowable uses, are responsible for the action that
 173 imposed the inordinate burden on the real property of the
 174 property owner, the court shall determine the percentage of

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175 responsibility each such governmental entity bears with respect
 176 to the inordinate burden. A governmental entity may take an
 177 interlocutory appeal of the court's determination that the
 178 action of the governmental entity has resulted in an inordinate
 179 burden. An interlocutory appeal does not automatically stay the
 180 proceedings; however, the court may stay the proceedings during
 181 the pendency of the interlocutory appeal. If the governmental
 182 entity does not prevail in the interlocutory appeal, the court
 183 shall award to the prevailing property owner the costs and a
 184 reasonable attorney fee incurred by the property owner in the
 185 interlocutory appeal.

186 (b) Following its determination of the percentage of
 187 responsibility of each governmental entity, and following the
 188 resolution of any interlocutory appeal, the court shall impanel
 189 a jury to determine the total amount of compensation to the
 190 property owner for the loss in value due to the inordinate
 191 burden to the real property. The property owner retains the
 192 option to forego a jury and elect to have the court determine
 193 the award of compensation. The award of compensation shall be
 194 determined by calculating the difference in the fair market
 195 value of the real property, as it existed at the time of the
 196 governmental action at issue, as though the owner had the
 197 ability to attain the reasonable investment-backed expectation
 198 or was not left with uses that are unreasonable, whichever the
 199 case may be, and the fair market value of the real property, as
 200 it existed at the time of the governmental action at issue, as
 201 inordinately burdened, considering the settlement offer together
 202 with the statement of allowable uses, of the governmental entity
 203 or entities. In determining the award of compensation,

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204 consideration may not be given to business damages relative to
 205 any development, activity, or use that the action of the
 206 governmental entity or entities, considering the settlement
 207 offer together with the statement of allowable uses has
 208 restricted, limited, or prohibited. The award of compensation
 209 shall include a reasonable award of prejudgment interest from
 210 the date the claim was presented to the governmental entity or
 211 entities as provided in subsection (4).

212 (c)1. In any action filed pursuant to this section, the
 213 property owner is entitled to recover reasonable costs and
 214 attorney fees incurred by the property owner, from the
 215 governmental entity or entities, according to their
 216 proportionate share as determined by the court, from the date of
 217 the presentation of the claim to the head of the governmental
 218 entity pursuant to paragraph (4) (a) the filing of the circuit
 219 court action, if the property owner prevails in the action ~~and~~
 220 ~~the court determines that the settlement offer, including the~~
 221 ~~statement of allowable uses, of the governmental entity or~~
 222 ~~entities did not constitute a bona fide offer to the property~~
 223 ~~owner which reasonably would have resolved the claim, based upon~~
 224 ~~the knowledge available to the governmental entity or entities~~
 225 ~~and the property owner during the 90-day notice period or the~~
 226 ~~150-day notice period.~~

227 2. In any action filed pursuant to this section, the
 228 governmental entity or entities are entitled to recover
 229 reasonable costs and attorney fees incurred by the governmental
 230 entity or entities from the date of the filing of the circuit
 231 court action, if the governmental entity or entities prevail in
 232 the action and the court determines that the property owner did

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 233 not accept a bona fide settlement offer, including the statement
 234 of allowable uses, which reasonably would have resolved the
 235 claim fairly to the property owner if the settlement offer had
 236 been accepted by the property owner, based upon the knowledge
 237 available to the governmental entity or entities and the
 238 property owner during the 90-day-notice period ~~or the 150-day-~~
 239 ~~notice period.~~

240 3. The determination of total reasonable costs and attorney
 241 fees pursuant to this paragraph shall be made by the court and
 242 not by the jury. Any proposed settlement offer or any proposed
 243 decision, except for the final written settlement offer or the
 244 final written statement of allowable uses, and any negotiations
 245 or rejections in regard to the formulation either of the
 246 settlement offer or the statement of allowable uses, are
 247 inadmissible in the subsequent proceeding established by this
 248 section except for the purposes of the determination pursuant to
 249 this paragraph.

250 (d) Within 15 days after the execution of any settlement
 251 pursuant to this section, or the issuance of any judgment
 252 pursuant to this section, the governmental entity shall provide
 253 a copy of the settlement or judgment to the Department of Legal
 254 Affairs.

255 (11) A cause of action may not be commenced under this
 256 section if the claim is presented more than 1 year after a law
 257 or regulation is first applied by the governmental entity to the
 258 property at issue.

259 (a) For purposes of determining when this 1-year claim
 260 period accrues:

261 1.a. A law or regulation is first applied upon enactment

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 262 and notice as provided for in this ~~sub-subparagraph~~ subparagraph
 263 if the impact of the law or regulation on the real property is
 264 clear and unequivocal in its terms and notice is provided by
 265 mail to the affected property owner or registered agent at the
 266 address referenced in the jurisdiction's most current ad valorem
 267 tax records. The fact that the law or regulation could be
 268 modified, varied, or altered under any other process or
 269 procedure does not preclude the impact of the law or regulation
 270 on a property from being clear or unequivocal pursuant to this
 271 ~~sub-subparagraph~~ subparagraph. Any notice under this ~~sub-~~
 272 ~~subparagraph~~ subparagraph shall be provided after the enactment
 273 of the law or regulation and shall inform the property owner or
 274 registered agent that the law or regulation may impact the
 275 property owner's existing property rights and that the property
 276 owner may have only 1 year after ~~from~~ receipt of the notice to
 277 pursue any rights established under this section.

278 b. If the notice required in sub-subparagraph a. is not
 279 provided to the property owner, the property owner may at any
 280 time after enactment notify the head of the governmental entity
 281 in writing via certified mail and, if available, e-mail that the
 282 property owner deems the impact of the law or regulation on the
 283 property owner's real property to be clear and unequivocal in
 284 its terms and, as such, restrictive of uses allowed on the
 285 property before the enactment. Within 45 days after receipt of a
 286 notice under this sub-subparagraph, the governmental entity in
 287 receipt of the notice must respond in writing via certified mail
 288 and, if available, e-mail to describe the limitations imposed on
 289 the property by the law or regulation. The property owner is not
 290 required to formally pursue an application for a development

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291 order, development permit, or building permit, as such will be
 292 deemed a waste of resources and shall not be a prerequisite to
 293 bringing a claim pursuant to paragraph (4)(a). However, any such
 294 claim must be filed within 1 year after the date of the property
 295 owner's receipt of the notice from the governmental entity of
 296 the limitations on use imposed on the real property.

297 2. Otherwise, the law or regulation is first applied to the
 298 property when there is a formal denial of a written request for
 299 development or variance.

300 Section 2. Present paragraphs (c), (d), and (e) of
 301 subsection (1) of section 70.45, Florida Statutes, are
 302 redesignated as paragraphs (d), (e), and (f), respectively, a
 303 new paragraph (c) is added to that subsection, and subsections
 304 (2), (4), and (5) of that section are amended, to read:

305 70.45 Governmental exactions.—

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

307 (c) "Imposed" or "imposition" as it relates to a prohibited
 308 exaction or condition of approval refers to the time at which
 309 the property owner must comply with the prohibited exaction or
 310 condition of approval.

311 (2) In addition to other remedies available in law or
 312 equity, a property owner may bring an action in a court of
 313 competent jurisdiction under this section to declare a
 314 prohibited exaction invalid and recover damages caused by a
 315 prohibited exaction. Such action may not be brought by a
 316 property owner at the property owner's discretion when until a
 317 prohibited exaction is actually imposed or when it is required
 318 in writing as a final condition of approval for the requested
 319 use of real property. The right to bring an action under this

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320 section may not be waived. This section does not apply to impact
 321 fees adopted under s. 163.31801 or non-ad valorem assessments as
 322 defined in s. 197.3632.

323 (4) For each claim filed under this section, the
 324 governmental entity has the burden of proving that the
 325 challenged exaction has an essential nexus to a legitimate
 326 public purpose and is roughly proportionate to the impacts of
 327 the proposed use that the governmental entity is seeking to
 328 avoid, minimize, or mitigate. The property owner has the burden
 329 of proving damages that result from a prohibited exaction.

330 (5) The court may award attorney fees and costs to the
 331 prevailing party; however, if the court determines that the
 332 challenged exaction which is the subject of the claim lacks an
 333 essential nexus to a legitimate public purpose, the court shall
 334 award attorney fees and costs to the property owner.

335 Section 3. The amendments made by this act to ss.
 336 70.001(4), (5), (6) and (11) and 70.45, Florida Statutes, apply
 337 only to claims made in response to actions taken by governmental
 338 entities on or after July 1, 2021.

339 Section 4. Paragraph (g) of subsection (2) of section
 340 70.51, Florida Statutes, is amended to read:

341 70.51 Land use and environmental dispute resolution.—

342 (2) As used in this section, the term:

343 (g) "Land" or "real property" has the same meaning as in s.
 344 70.001(3)(g) means land and includes any appurtenances and
 345 improvements to the land, including any other relevant real
 346 property in which the owner had a relevant interest.

347 Section 5. This act shall take effect July 1, 2021.

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Date: March 15, 2021

Agency Affected:	Public Service Commission	Telephone: 413.6960
Program Manager:	Adam Potts	Telephone: 413.6596
Agency Contact:	Adam Potts	Telephone: 413.6596
Respondent:	Kaley Slattery	Telephone: 408.1181

RE: SB 1944/HB 1567

I. SUMMARY:

SB 1944, filed by Senator Albritton, and HB 1567, filed by Representative DiCeglie, have identical language. For editorial purposes SB 1944 and HB 1567 are referred to collectively as the bill. The bill amends Section 366.02, Florida Statutes (F.S.), by adding definitions for terms “attaching entity,” “communications services,” “pole,” “pole attachments,” “pole owner,” and “redundant pole.” Section 366.04, F.S., is amended to grant the Florida Public Service Commission (Commission or FPSC) jurisdiction over rates, charges, terms, and conditions of pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments. The bill establishes Chapter 366.97, F.S., which expresses the Legislative finding that it is in the public interest for poles to be hardened to withstand extreme weather conditions and for pole attachments to be relocated to hardened poles in a timely manner. The FPSC is also given authority to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, and other equipment of communications services providers. The FPSC shall also require communications services providers to establish storm reserve funds for the repair and replacement of facilities after natural disasters. Section 366.97, F.S., also grants a pole owner the right to relocate attached facilities to new storm hardened poles at the attaching entity’s expense, as well as outlines the process in which ownership of poles can be transferred to entities that continue to attach facilities to redundant poles. The bill becomes effective upon becoming law.

The FPSC must adopt rules to implement the bill by October 1, 2021. All penalties assessed and collected by the PSC for non-compliance with agency rules will be used to provide grants to deploy broadband in rural and under-served areas. The FPSC must also establish criterion to evaluate the location in which grants should be deployed to install or upgrade broadband infrastructure, and which business or organization should receive the grant.

II. PRESENT SITUATION:

In 1978, Congress passed the Pole Attachment Act, which added Section 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish subsidized rates for pole attachments for the cable industry. The Telecommunications Act of 1996 amended Section 224 to mandate access to poles, conduits, and rights of way to telecommunications service providers. Under the federal law, municipalities and rural electric cooperatives were exempted from this requirement “because the pole attachment rates charged by municipally owned and cooperated utilities were already subject to a decision-making process based upon constituent needs and interests.”

The FPSC has rate-setting jurisdiction over electric public utilities.¹ A public utility is commonly referred to as investor-owned utility (IOU). There are currently five electric IOUs providing retail services in Florida.² As of year-end 2020, Florida’s electric IOUs owned a collective 2,867,025 poles, which had 2,837,881

¹ See Sections 366.02, 366.04, and 366.05, F.S.

² FPSC, 2020 Annual Report, [\[2\] http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf](http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf), page 13.

attachments from other entities.³

Under Chapter 366, F.S., the Commission has authority over electric safety relating to poles. Section 366.04(6), F.S., provides that the Commission has exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. The Commission has the authority to determine that a pole attachment connection has violated the National Electrical Safety Code (NESC).

In accordance with the FPSC's Division of Engineering 2019 Standard Operating Procedures, inspections are performed by an electric safety engineering specialist. The Electric Safety Supervisor will send a certified letter to the electric IOU when there is a determination that an attachment does not meet NESC standards. The notification cites the NESC code section and the location of the violation. The utility must inform the FPSC that corrections have been completed 90 days after the letter was sent, and the Commission can then re-inspect. Under the current process, the Commission will notify the regulated utility of a safety violation, and the regulated utility will contact the third-party attacher who violates the safety standard.

Following the hurricane seasons of 2004-2005, the Commission implemented several initiatives to harden utility infrastructure to better withstand extreme weather events. Among these were requirements to conduct wooden pole inspection and vegetation management programs. In addition, the Commission found that Florida's electric IOUs had not provided adequate assurance that their practices and procedures governing joint-use facilities serve to mitigate storm damages and customer outages. Consequently, each electric IOU was required to establish a plan, an implementation timeline, and a calculation of rate impacts to audit joint-use agreements that include pole strength assessments. Each electric IOU's plan for performing pole strength assessments includes the stress impacts of all pole attachments as an integral part of its eight-year pole inspection program. The electric IOUs' plans were found to be consistent with the Commission's intent; nevertheless, the Commission required that each utility reevaluate its plan annually to assess the need for any adjustment.⁴

In 2006, the Commission also ordered each local exchange telecommunications company to implement an 8-year inspection program of its wooden poles based on the requirements of the NESC.⁵ However, in 2011 the Legislature amended Chapter 364, F.S., to deregulate telecommunications companies. Consequently, the Commission did not require the local exchange telecommunications companies to continue performing pole inspections after July 1, 2011.

Section 364.011, F.S., highlights telecommunications service offerings that are exempt from Commission oversight, such as wireless telecommunications service providers.⁶ Telecommunications companies offering services not defined in Section 364.011, F.S., must acquire a Certificate of Authority to provide telecommunications service in the state of Florida, and are subject to regulatory assessment fees (RAF).⁷

The FPSC does not currently have jurisdiction over the rates, charges, terms, and conditions of pole attachments or detachments. Pole attachment agreements between the pole owner and attachers govern the price, terms, and conditions. Disputes are adjudicated before the FCC.

³ FPSC, 2019 Distribution Reliability Reports for IOUs in Florida, *Initiative 2*, <http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability>, accessed March 5, 2021.

⁴ <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Electricgas/stormhardening2007.pdf>, at page 21.

⁵ See Order No. PSC-2006-0168-PAA-TL, issued March 1, 2006, in Docket No. 20060077-TP, In re: Proposal to require local exchange telecommunications companies to implement ten-year wood pole inspection program.

⁶ See Section 364.011, F.S.

⁷ See Sections 364.33, and 364.336, F.S.

III. EFFECT OF PROPOSED CHANGES:

The bill amends Section 366.02, F.S., by adding definitions for several terms. "Attaching entity" is defined as "a person that is a local exchange carrier, a public utility or an electric utility, a communications services provider, or a cable television operator who owns or controls pole attachments." "Communications services" is defined as having the same meaning as in Section 202.11(1), F.S., which are "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance." "Pole" is defined as "a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity distribution and that is owned in whole or in part by a pole owner, or a streetlight fixture that is owned in whole or in part by a public utility." "Pole attachments" is defined as a "local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner." "Pole owner" is defined as a "local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used in whole or in part, for electrical purposes or for any wire or wireless communications." "Redundant pole" is defined as:

- A pole that is owned or controlled by a pole owner that is within 50 feet of a new pole that is intended to replace the old pole from which some or all pole attachments have yet to be removed from;
- A pole that is left standing after the pole owner has relocated its facilities to underground but on which pole attachments of other attaching entities remain; or
- A pole that is left standing after a pole owner's attachments have been removed from that route or location to accommodate a new route or design for the delivery service.

These definitions will be added as subsections (4) through (9) of the Section 366.02, F.S.

The bill adds subsections (8) and (9) to Section 366.04, F.S. Subsection (8) would grant the Commission authority to regulate and enforce the rates, charges, terms, and conditions of pole attachments in situations in which a pole owner is unable to reach an agreement with a party seeking pole attachments. This includes pole attachments regulated under 47 U.S.C. 224(a)(4), which governs attachments by cable television systems, or telecommunications service providers, to a pole, duct, conduit, or right-of-way owned or controlled by a utility. The bill also addresses attachments to streetlight fixtures and attachments to poles owned by an entity providing communications services. Parties will remain encouraged to enter into voluntary pole attachment agreements, and the bill does not intend to prevent parties from entering these agreements without Commission approval.

Paragraph (8)(e) would authorize the Commission to hear and resolve complaints regarding rates, charges, terms and conditions of pole attachments, and that previous FCC decisions do not act as precedent. The Commission, at the request of an affected party, shall assume jurisdiction over complaint proceedings currently pending before the FCC. The Commission must adopt rules to implement this subsection using one or more appropriate formulae to apportion costs and set pole attachment rates. The Commission does not currently have jurisdiction to set rates for communications providers.

Subsection (9) would grant the Commission authority to regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers. The Commission must adopt rules to require communications services providers to conduct mandatory pole inspections, vegetation management, and establish storm reserve funds. The Commission does not currently have jurisdiction over communications providers in these areas, including communications services providers who are not exempt under Section 364.011, F.S., and subject to the Commission's jurisdiction.

The bill establishes Section 366.97, F.S., addressing redundant poles created by the process of

converting overhead electric facilities to underground or the replacement of existing poles. The bill would state the Legislative finding that it is in the public interest to timely and sequentially remove pole attachments from redundant poles. Paragraph (2)(a) requires pole attachers to remove attachments from a redundant pole within 90 days of written notice by the pole owner. The form and requirements of the written notice must be established by the Commission. If an attaching entity fails to comply with the 90-day deadline, paragraph (2)(b) permits a pole owner to transfer pole attachments to the new pole at the non-compliant attaching entity's expense. Paragraph (2)(c) permits a pole owner to remove an abandoned pole attachment and sell or dispose of the attachment, with no recourse from the pole attachment owner unless a finding of gross negligence or willful misconduct is apparent. Paragraph (2)(d) would authorize the Commission to adopt rules that require security instruments to be posted by attaching entities in amounts reasonably sufficient to cover the costs of disposition of pole attachments. Paragraph (3)(a) would allow a pole owner to transfer ownership of the pole to an attaching entity that has failed to meet the 90-day deadline to remove pole attachments, effective upon written notice. The new owner would be required to pay the remaining book value of the pole and assume the obligations of owning the new pole.

Subsections 366.97(4) and (5), F.S., would authorize the Commission to impose monetary penalties upon any entity subject to its jurisdiction under this section that is found to be in violation of its requirements. The assessed penalties must be used to provide grants to install and upgrade broadband infrastructure in rural communities. The Commission is required to establish criteria for evaluating the business or organization that will receive these grants.

By October 1, 2021, the Commission must adopt rules to ensure compliance with pole inspection requirements by communications services providers, and establish monetary penalties for failure to comply with any of the aforementioned rules. While the bill is explicit regarding imposing monetary penalties upon violators that are communications services providers, the bill is silent regarding other types of attachers, such as electric utilities.

The bill becomes effective upon becoming law.

IV. ESTIMATED FISCAL IMPACTS ON STATE AGENCIES:

Pole attachment disputes will be adjudicated at the FPSC, rather than at the FCC. The fiscal impacts on the FPSC is listed below, the fiscal impacts on other state agencies is unknown. Beyond the rate associated with the new positions, this legislation could require additional pay additives or increases to existing FPSC staff. To effectively manage penalties and grant administration a new trust fund may need to be established.

	(FY 20-21) Amount / FTE	(FY 21-22) Amount / FTE	(FY 22-23) Amount / FTE
A. Salaries & Benefits			
1. Recurring	\$656,919/13 FTE	\$656,919/13 FTE	\$656,919/13 FTE
2. Non-Recurring	\$0/0 FTE	\$0/0 FTE	\$0/0 FTE
B. Expenditures			
1. Recurring	\$133,159/0 FTE	\$133,159/0 FTE	\$133,159/0 FTE
2. Non-Recurring	\$186,123/0 FTE	\$0/0 FTE	\$0/0 FTE

Rate need 686,607

V. ESTIMATED FISCAL IMPACTS ON LOCAL GOVERNMENTS:

Pole attachment disputes will be adjudicated at the FPSC, rather than at the FCC. The fiscal impacts on local governments is unknown.

VI. ESTIMATED IMPACTS ON PRIVATE SECTOR:

Pole attachment disputes will be adjudicated at the FPSC, rather than at the FCC. The fiscal impacts of on private sector is unknown.

VII. LEGAL ISSUES:

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No, if the Commission lawfully assumes jurisdiction over the federal pole attachment program. The Federal Communications Commission (FCC) regulates the rates, terms, and conditions of pole attachments under 47 USC § 224, unless a state, through state legislation, expressly asserts jurisdiction over the program, as provided by federal law. The process of state assumption of federal pole attachment regulation is called “reverse preemption.” Once federal pole attachment program is lawfully assumed by a state, the state must certify pursuant to 47 USC § 224(c)(2) that it has adopted pole attachment regulations before being able to enforce such state regulations. A state may only adopt the federal program pursuant to 47 USC § 224(c)(2) in its entirety, and is not permitted to assume control over only parts of the federal program. However, states that have asserted jurisdiction over the rates, terms, and conditions of pole attachments may also add on additional laws, specifying further detail on pole related issues, such as relocation issues.

B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)?

No.

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

Yes. Litigation may occur between a pole owner and an attaching entity. Disputes can arise over pole access, redundant poles, the attachment removal process, relocation and transfer of poles, and pole attachment contract subject matter such as payments. Litigation may also occur during the rulemaking process. Attaching entities and interested persons will want to be involved in the process of setting of rates, terms, and conditions to ensure they are just and reasonable. The Commission’s enforcement activities may lead to litigation as well as the Commission’s provision of grants. Finally, litigation may arise from the Commission’s authority to hear and resolve complaints concerning rate charges, terms, conditions, voluntary agreements, and denial of access relative to pole attachments.

D. Other:

VIII. COMMENTS:

The bill gives the FPSC jurisdiction over entities defined as “communications services” providers. The bill would require the Commission to assert jurisdiction over telecommunications providers in the areas governed by the bill, which have not been regulated by the Commission since 2011. The bill would also appear to require the Commission to assert similar jurisdiction over wireless communications and cable-television providers, which have never been regulated by the Commission. The definitions of “pole owner,” and “attaching entity” in the bill include electric utilities, which pursuant to Section 366.02(2), F.S., includes municipal and rural cooperative electric utilities. This appears to give the Commission jurisdiction to address pole attachment disputes that involve municipal and cooperative utilities, which is an extension of the Commission’s limited jurisdiction over these entities.

The bill provides for the imposition of monetary penalties on any communications services provider that fails to comply with any such rule of the Commission. The bill is silent regarding monetary penalties on electric IOUs and other electric utilities that may be attached to a pole and fails to comply with Commission rules.

The bill references electricity distribution in its definition of a pole but does not define what is meant by electricity distribution. It is generally industry practice that electrical distribution is defined as 69 kV or less, poles included. However, distribution wires are sometimes attached to transmission poles. It is unclear whether such transmission poles would be a pole under the bill.

Because of the bill’s complexity, and the noticing requirements provided by Chapter 120, F.S., it is not possible to adopt rules by October 1, 2021.

The bill does not establish authority to assess RAFs to the communications services providers that would become subject to the Commission’s authority under the bill. The cost associated with the regulatory requirements established in Florida law have traditionally been assessed to the utilities and telecommunications companies subject to the Commission’s authority. Also, the establishment of a trust fund may be required to deposit penalties assessed for non-compliance with Commission rules and for disbursements associated with broadband grants. Finally, it does not appear that the Commission would have access to the books and records of communications services providers, as it does over jurisdictional electric, gas, and water and wastewater utilities. Lacking such access may limit the Commission’s ability to verify compliance with rules, including the communications services providers’ storm reserve funds. Absent this authority, the Commission may utilize physical inspections of poles and associated facilities, and discovery in evidentiary proceedings to meet the requirements of this bill.

Prepared by: Brandon Wendel, Shelby Eichler, and Ashley Weisenfeld.

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THE FLORIDA SENATE

APPEARANCE RECORD

March 30, 2021

Meeting Date

SB 1944

Bill Number (if applicable)

Topic Communications Facilities Pole Attachments

Amendment Barcode (if applicable)

Name Tracy Hatch

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City

State

Zip

Speaking: For Against Information

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

Representing AT&T

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/31

Meeting Date

SB 1944

Bill Number (if applicable)

Topic Utility and Communications Poles

Amendment Barcode (if applicable)

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Speaking: For Against Information

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

Representing Florida Internet and Television Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

SB 1944

Meeting Date

Bill Number (if applicable)

Topic Utility & Communication Poles

Amendment Barcode (if applicable)

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Speaking: For Against Information

Waive Speaking: In Support Against
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Representing Lumen Technologies

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-30-21

Meeting Date

SB 1944

Bill Number (if applicable)

Topic Utility and Telecommunications Rates

Amendment Barcode (if applicable)

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Speaking: For Against Information

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

Representing Florida Power & Light

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-30-21

Meeting Date

1944

Bill Number (if applicable)

Topic Pole Attachments

Amendment Barcode (if applicable)

Name Terry Deason

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Speaking: For Against Information

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

Representing Florida Power & Light

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1944

INTRODUCER: Senator Albritton

SUBJECT: Utility and Communications Poles

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1944 creates a process for handling redundant utility poles and abandoned pole attachments and vests the Florida Public Service Commission (commission) with jurisdiction to administer the bill's provisions.

The bill defines the terms "attaching entity," "communications services," "pole," "pole attachments," "pole owner," and "redundant pole."

The bill delineates circumstances in which a pole owner may deny access to its poles, including insufficient capacity, safety, and reliability, and provides that a pole owner may consider the financial and performance-related capabilities of the entity requesting access.

Under the bill, the commission is authorized to regulate and enforce rates, charges, terms, and conditions for pole attachments when parties are unable to reach an agreement; and to regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles and pole attachments. The commission may hear and resolve complaints, including denial of pole attachment. Under the bill, Federal Communications Commission (FCC) precedent is not binding, and the commission must assume jurisdiction over a complaint proceeding that is pending before the FCC, if requested by a party.

The bill requires the commission to adopt rules by October 1, 2021, that consider the interests of the subscribers. The rules must include:

- At least one formula for apportioning costs;
- A requirement for communications services providers to establish storm reserve funds;
- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management;
- Establishment of storm reserve funds;

- The sequential and timely removal of pole attachments; and
- Monetary penalties imposed on communication services providers for failure to comply with commission rules.

The bill creates s. 366.97, F.S.; relating to redundant poles, their transfer of ownership, and provides for penalties. The bill:

- Requires attachments to be removed from a redundant pole within 90 days of receiving written notice to do so;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense;
- Allows a pole owner to remove and sell or dispose of an attachment, at the attaching entity's expense, and requires the attaching party to indemnify, defend, and hold the pole owner harmless;
- Allows the commission to impose requirements for an attaching entity to post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal, transfer, or disposal of the attachment;
- Provides an expedited process for a pole owner to transfer title of a redundant pole to the noncompliant attaching entity by operation of law, requires payment for the pole's remaining book value within 60 days of title transfer, and allows enforcement in the circuit court in which the pole is located;
- Authorizes the commission to impose monetary penalties for violation of these provisions; and
- Provides that parties may enter into pole attachment contracts without commission approval and that existing contract rights under valid pole agreements entered into before the bill's effective date are not impaired.

The bill is effective upon becoming law.

II. Present Situation:

Regulation of Pole Attachment

In 1978, Congress passed the "Pole Attachment Act," which added s. 224 to the Communications Act of 1934, to require the FCC to establish rates, terms, and conditions for pole attachments for the cable industry.¹

In 1996, the "Telecommunications Act" added provisions making access to utility poles mandatory for telecommunications service providers, providing for nondiscriminatory access, unless there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.² Municipalities and rural electric cooperative utilities are exempt from the provisions of 47 U.S.C. s. 224.³ The term "utility" is defined as:

¹ P.L. 95-234, *codified* at 47 U.S.C. s. 224.

² P.L. 104-104, *codified* at 47 U.S.C. s. 224(f).

³ 47 U.S.C. s. 224(a)(1).

[A]ny person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communication. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.⁴

A state, however, can assume regulation of pole attachment through a process known as “reverse preemption.” This requires a state to expressly assert jurisdiction through state legislation, followed by certifying to the FCC that “in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.”⁵ As of March 19, 2020, 22 states and the District of Columbia have reversed preemption.⁶ Florida does not presently regulate pole attachments.

There are currently five pending “Section 224 Pole Attachment Complaints” filed with the FCC.⁷ Four of the pending complaints concern BellSouth Telecommunications LLC, d/b/a AT&T Florida (AT&T); of which two are against Florida Power and Light Company (FPL)⁸, and two are against Duke Energy affiliated companies.

The complaint filed by AT&T against FPL on July 1, 2019, alleged that the rate paid to attach AT&T’s facilities to FPL was unjust and unreasonable under FCC rules and orders issued pursuant to 47 U.S.C. s. 224.⁹ The FCC granted the complaint in part, finding that AT&T was entitled to a reduced rate for the period ending on December 31, 2018.¹⁰ Under that order, the parties were unable to agree as to the proper calculation of the reduced rate and the FCC further decided that AT&T was entitled to a refund of any overpayments for the period of July 1, 2014 to December 31, 2018.¹¹ The FCC established the pole attachments rate under its last order.¹²

Third-Party Pole Attachment and Joint Use

A third-party pole attachment is a communications attachment by a “third-party attacher,” such as a cable television system or provider of telecommunications service to a pole, duct, conduit, or

⁴ *Id.*

⁵ 47 USC § 224(c)(2).

⁶ FCC, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, Mar. 19, 2020, <https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-2> (last visited Mar. 14, 2021).

⁷ See FCC, *EB - Market Disputes Resolution Division Pending Complaints*, <https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints> (last visited Mar. 14, 2021).

⁸ See FCC, *Memorandum Opinion and Order, DA-21-57*, January 14, 2021, <https://docs.fcc.gov/public/attachments/DA-21-57A1.pdf> (last visited Mar. 14, 2021). After release of the bureau order in AT&T vs FPL, the parties were unable resolve their differences and AT&T then filed a second complaint against FPL with the FCC asserting that the provisions invoked by FPL in its Notice of Termination are unjust and unreasonable under section 224 and requested that they be amended.

⁹ *Id.*, at 1 n.1.

¹⁰ FCC, *Grants, in Part, AT&T Pole Attachment. Complaint Against FL P&L: Memorandum Opinion and Order, DA-20-529*, May 20, 2020, <https://www.fcc.gov/document/fcc-grants-part-att-pole-attach-complaint-against-fl-pl> (last visited March 14, 2021).

¹¹ FCC, *EB Grants in Part and Stays in Part AT&T Florida's Complaint Memorandum Opinion and Order: DA-21-57*, January 14, 2021, <https://www.fcc.gov/document/eb-grants-part-and-stays-part-att-floridas-complaint> (last visited March 14, 2021).

¹² *Id.*

right-of-way owned or controlled by a utility.¹³ On April 7, 2011, the FCC approved its pole attachment order.¹⁴ Public power utilities are not directly impacted by the order because their pole attachments are not subject to the FCC’s jurisdiction. The order revised the telecom formula and make-ready provisions to provide a benchmark for pole attachment rates and access.¹⁵

“Joint use” refers to sharing use of a utility pole by agreement between pole-owning utilities.¹⁶ “Pole attachments” relate to non-pole-owning cable and telecommunication service providers, such as cable TV and broadband providers.¹⁷ This provides non-pole owning utilities with access to a utility’s distribution poles, conduits, and rights of way for installation of facilities and equipment in order to build an interconnected network with reduced cost to consumers.¹⁸ Other benefits of joint use and pole attachments include the ability to share the high cost of infrastructure; minimizing the visual impact of two separate pole networks; and minimizing roadway hazards.

According to the Edison Electric Institute, the mandatory nature of providing non-pole-owning utilities with access to poles has resulted in a number of issues such as:

- “Overlashing,” where existing attachments are made without notification;
- Compromised safety and reliability requirements for the installation of cable or telecommunications facilities;
- Failure to support utility efforts to inspect for safety violations and capacity overloading;
- Failed cooperation among the pole owner and attaching entities as it pertains to repairs, the expedited transfer of attachments to newly erected hardened poles, and undergrounding; and
- Electric utilities primarily bearing the burden of costs, particularly as it relates to weathering and storm damage.¹⁹

National Joint Utilities Notification System

The National Joint Utilities Notification System (NJUNS) is a consortium of utility companies formed for the purpose of improving communication among utilities as it relates to pole transfers and replacements.²⁰ After a tragic incident occurred during a pole transfer, it was decided that certified letters and phone calls were no longer a suitable way to provide notice.²¹ NJUNS,

¹³ 47 USC s. 224(a)(4).

¹⁴ FCC, FCC Reforms Pole Attachment Rules to Boost Broadband Deployment, FCC 11-50, April 7, 2011, <https://www.fcc.gov/document/fcc-reforms-pole-attachment-rules-boost-broadband-deployment> (last visited Mar. 14, 2021).

¹⁵ See American public Power Association, Preserving the Municipal Exemption from Federal Pole Attachment Regulations, <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations#:~:text=In%201978%2C%20Congress%20passed%20the%20Pole%20Attachment%20Act%2C,for%20pole%20attachments%20for%20the%20then-new%20cable%20industry> (last visited Mar. 14, 2021).

¹⁶ See Edison Electric Institute, *Pole Attachments 101*, <https://ecfsapi.fcc.gov/file/7020708245.pdf> (last visited Mar. 14, 2021). While joint use is usually governed by contracts, the terms and conditions for detachment from a pole are usually handled in the form of an amendment to the original contract.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ NJUNS, *About: Who We are*, <https://web.njuns.com/about/> (last visited Mar. 14, 2021).

²¹ *Id.*

provides a dashboard system that allows members to generate tickets and track pole transfers.²² Florida has been a member of NJUNS since 1992.²³

Florida Public Service Commission

The commission is an arm of the legislative branch of government.²⁴ The role of the commission is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.²⁵ In order to do so, the commission exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.²⁶

Currently, the commission does not have the authority to regulate pole attachments, absent the legislature expressly conferring this jurisdiction on the commission.²⁷ "Traditionally, each time a public service of this state is made subject to the regulatory power of the commission, the legislature has enacted a comprehensive plan of regulation and control and then conferred upon the commission the authority to administer such plan."²⁸

Storm Reserve Funds

Extreme wind events, like hurricanes and tornados, can destroy electric infrastructure, snapping poles and collapsing transmission towers; even underground electric systems are susceptible to the upending of fallen tree roots and erosion.²⁹ Prior to Hurricane Andrew in 1992, electric utilities could purchase commercial insurance at reasonable and affordable prices, which allowed them the financial ability to maintain relatively small storm damage reserves.³⁰ However, after Hurricane Andrew, risk management for electric utilities fundamentally changed, with insurance costs drastically increasing.³¹ Given the change in landscape, the electric utilities asked the commission to allow them to self-insure, which the commission began addressing in 1993, giving way to a storm damage reserve balance that can accommodate most storm years.³²

²² See NJUNS, *Best Practices*, <https://web.njuns.com/njuns-best-practices/> (last visited Mar. 14, 2021).

²³ NJUNS, *Members*, <https://web.njuns.com/njuns-best-practices/> (last visited Mar. 14, 2021).

²⁴ Section 350.001, F.S.

²⁵ See FPSC, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 14, 2021).

²⁶ *Id.*

²⁷ See *Teleprompter Corp. v. Hawkins*, 384 So. 2d 648, 650 (Fla. 1980), citing *Radio Tel. Commc'ns, Inc. v. Se. Tel. Co.*, 170 So. 2d 577, 581 (Fla. 1964), "The commission did not have jurisdiction over radio communication service, notwithstanding the interconnection of such radio service with a regulated utility's telephone landline." [T]he legislature of Florida has never conferred upon this commission any general authority to regulate public utilities."

²⁸ *Hawkins*, 384 So. 2d at 650.

²⁹ See FPSC, *Background on Storm-related Cost Recovery Mechanisms and Review of Storm Preparedness and Restoration* (Apr. 10, 2018) (on file with the Senate Committee on Regulated Industries).

³⁰ *Id.*

³¹ *Id.* For example, prior to Hurricane Andrew, Florida Power and Light had a per-occurrence, or per-storm, insurance limit of \$350 million, which cost \$3.5 million in annual premiums. After Hurricane Andrew, the best available coverage rate was an aggregate limit of \$100 million a year with a \$23 million annual premium.

³² See, e.g., Order No. PSC-93-0918-FOF-EI, June 17, 1993, Docket No. 930405-EI, <http://www.floridapsc.com/library/filings/1993/06506-1993/06506-1993.pdf> (last visited Mar. 14, 2021); Order No. PSC-93-0918-FOF-EI, Oct. 15, 1993, Docket No. 930867-EI, <http://www.floridapsc.com/library/filings/1993/11100-1993/11100-1993.pdf> (last visited Mar. 14, 2021).

Currently, cable television providers, local exchange companies and communications services providers do not have storm reserve funds or cost recovery mechanisms that are established or approved by the commission.

Electric Utilities

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.³³ Investor-owned electric utility rates and revenues are regulated by the commission.³⁴ Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the commission to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.³⁵ As of year-end 2020, Florida's electric utilities owned a collective 2,867,025 poles, which had 2,837,881 attachments from other entities.³⁶

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.³⁷ Municipally owned utility rates and revenues are regulated by their city commission.³⁸ The commission does not fully regulate publicly owned municipal electric utilities.³⁹ However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁴⁰

In total there are 34 municipal electric companies in Florida.⁴¹ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.⁴²

Rural Electric Cooperative Utilities

Rural electric cooperative utilities are joint ventures organized for purposes of providing electricity to a specified area.⁴³ Rates and revenues for a cooperative utility are regulated by their

³³ *Id.*

³⁴ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 14, 2021).

³⁵ FPSC, *2020 FPSC Annual Report*, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 14, 2021).

³⁶ FPSC, 2019 Distribution Reliability Reports for IOUs in Florida, *Initiative 2*, <http://www.floridapsc.com/ElectricNaturalGas/ElectricDistributionReliability> (last visited Mar. 14, 2021).

³⁷ FDACS, *Electric Utilities*, *supra* at n. 28.

³⁸ *Id.*

³⁹ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴⁰ *Id.*

⁴¹ FDACS, *Electric Utilities*, *supra* at n. 28.

⁴² Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 14, 2021).

⁴³ FDACS, *Electric Utilities*, *supra* at n. 28.

elected cooperative officers.⁴⁴ Most cooperatives have been financed by the Rural Electrification Association and most, in Florida, are represented by the Florida Electric Cooperatives Association, Inc.⁴⁵

In total there are 18 rural electric cooperatives in Florida.⁴⁶ The commission does not regulate the rates and service quality of cooperatives, however, it does have jurisdiction as to rate structure, territorial boundaries, bulk power supply operations, and power supply planning.⁴⁷

Telecommunications Companies

In 2011, the Florida Legislature deregulated telecommunications companies and consequently, the commission lost its authority to require telecommunications companies to continue performing pole inspections after July 1, 2011. Prior to losing jurisdiction, the commission had issued an order in 2006, requiring telecommunications companies to implement an eight year inspection program of its wooden poles based on the requirements of the National Electrical Safety Code.⁴⁸ Section 364.011, F.S., expressly exempts the following services from commission oversight:

- Intrastate interexchange telecommunications services;
- Broadband services, regardless of the provider, platform, or protocol;
- VoIP;
- Wireless telecommunications, including commercial mobile radio service providers;
- Basic service; and
- Nonbasic services or comparable services offered by any telecommunications company.

III. Effect of Proposed Changes:

Section 1 amends s. 366.02, F.S. to define the terms:

- “Attaching entity,” means a local exchange carrier, a public utility or an electric utility, a communications services provider, or a cable television operator who owns or controls pole attachments.
- “Communications services,” has the same meaning as in s. 202.11, F.S., which includes the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals.
- “Pole” meaning a pole, duct, conduit, or right-of-way that is used for wire or wireless communications or electricity, owned by a pole owner; or a streetlight fixture owned by a public utility.
- “Pole attachments,” means local exchange carrier, electric, communications services, or cable television facilities attached to a pole by an entity other than the pole owner.
- “Pole owner,” means a local exchange carrier, a public utility or an electric utility, a communications services provider, a cable television operator, or other public utility which owns a pole used for electrical purposes or wire or wireless communications.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴⁸ See FPSC, Order No. PSC-2006-0168-PAA-TL, March 1, 2006, Docket No. 20060077-

TP, <http://www.psc.state.fl.us/library/filings/2006/01762-2006/01762-2006.PDF> (last visited Mar. 14, 2021).

- “Redundant pole,” means:
 - A pole owned that is within 50 feet of a new pole intended to replace an old pole, from which attachments have not been removed or transferred to the new pole;
 - A pole that still has attachments after the pole owner has relocated its facilities underground; or
 - A pole left standing after a pole owner’s attachments have been removed to another location to accommodate a new service route.

Section 2 grants the commission jurisdiction to regulate and enforce rates, charges, terms, and conditions, for pole attachments when the parties are unable to reach an agreement.

The bill provides that the commission’s authority includes but is not limited to that referenced in 47 U.S.C. s. 224(c), relating to pole attachments.

The bill provides:

- Legislative intent that parties be encouraged to enter into voluntary pole attachment agreements without commission approval and that parties not be prevented from voluntarily entering into such contracts without commission approval.
- Circumstances in which a pole owner can deny access to its poles, including insufficient capacity, safety, reliability, and provides that a pole owner can consider the financial and performance-related capabilities of the entity requesting attachment.
- Jurisdiction for the commission to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, including denial of pole attachment, and provides that FCC precedent is not binding in such proceedings.
- A requirement for the commission to assume jurisdiction of a complaint proceeding pending before the FCC, if requested to do so by a party to the proceeding.
- The commission must regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles, conduits, ducts, pipes, pole attachments, wires, cables, and related plant and equipment of communication services providers.

The bill requires the commission to adopt rules by October 1, 2021, which consider the interests of the subscribers and users. The rules must include:

- At least one formula for apportioning costs;
- A requirement for communications services providers to establish storm reserve funds;
- Provisions for mandatory pole inspections, including repair or replacement;
- Vegetation management;
- Establishment of storm reserve funds;
- The sequential and timely removal of pole attachments; and
- Monetary penalties imposed on communication services providers for failure to comply with commission rules.

Section 3 creates s. 366.97, F.S.; relating to redundant poles, their transfer of ownership, and provides for penalties. The bill includes the following statements of legislative intent:

- It is in the public’s interest for poles to be hardened against extreme weather conditions by replacing older poles, which may result in redundant poles;

- Pole owners may incur liability when prevented from removing redundant poles because of remaining attachments still in use by other entities;
- Redundant poles are aesthetically unappealing and may create overcrowding and unsafe conditions; and
- It is in the public interest to timely and sequentially remove pole attachments from redundant poles and transfer ownership of a pole to a user from an owner no longer using it.

The bill provides a procedure for dealing with redundant or abandoned poles which:

- Requires attachments to be removed from a redundant pole within 90 days of receiving written notice to do so;
- Allows a pole owner to relocate an attachment to a new pole at the attachment owner's expense;
- Allows a pole owner to remove and sell or dispose of an attachment, at the attaching entity's expense and requires the attaching party to indemnify, defend, and hold the pole owner harmless;
- Allows the commission to impose requirements for an attaching entity to post a security instrument in favor of the pole owner in an amount sufficient to cover the cost of removal, transfer, or disposal of the attachment; and
- Provides an expedited process for a pole owner to transfer title of a redundant pole to the noncompliant attaching entity by operation of law, requires payment for the pole's remaining book value within 60 days of title transfer, and allows enforcement in the circuit court in which the pole is located.

Under the bill, the commission is required to impose fines for violation of the provisions within section 3 of the bill by entities under its jurisdiction. Upon petition by a pole owner, the commission may issue orders for the removal or transfer of pole attachments by noncompliant attaching entities, and must impose monetary penalties.

The commission must use all monetary penalties to provide grants for installing and upgrading broadband infrastructure in unserved and underserved rural and low-income areas of the state. The commission must establish criteria for awarding grants from the fund to businesses and organizations that have demonstrated the ability to construct and install infrastructure. Such entities must submit an application and proposal detailing how the grant funds would further the objective of expanding broadband services in unserved and underserved areas.

The bill repeats a statement of legislative intent that the provisions in Section 3 should not be construed to prevent parties from voluntarily entering into such contracts without commission approval, or construed to impair contract rights in existence before the bill becomes effective.

The commission must adopt rules by October 1, 2021, to implement Section 3 of the bill, including rules for the sequential removal of attachments from redundant poles and the establishment of monetary penalties.

Section 4 directs the Division of Law Revision to replace references to "the effective date of this act," with the date that the bill becomes a law.

Section 5 provides that the bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 commission estimates the implementation of this bill will require 13 full-time positions and \$925,566 (\$790,078 recurring) from the Regulatory Trust Fund based on staffing needs and other expenses associated with the additional regulatory responsibilities.⁴⁹

VI. Technical Deficiencies:

None.

⁴⁹ Public Service Commission, *Analysis re: SB 1944 / HB 1567*, March 15, 2021 (On file with Community Affairs Committee).

VII. Related Issues:

The bill authorizes the commission to impose a monetary penalty for a violation of s. 366.97, F.S. The bill does not provide a maximum amount for the authorized fine. However, s. 366.095, F.S., on penalties, provides the commission with the authority to impose a penalty on entities subject to its jurisdiction for failure to comply or willful violation of any commission rule or provision within ch. 366, F.S. The fine may not exceed \$5,000 per offense and each day in which refusal to comply or the violation continues constitutes a separate offense. In addition, s. 350.127, F.S., contains a similar provision, which includes violations of commission orders and the authority to amend, suspend, or revoke any certificate issued by the commission.

Lines 162-164 of the bill subject communication services providers that fail to comply with any such rule of the commission to monetary fines but is silent as to other types of utilities which may also have attachments on utility poles.

The bill references electricity distribution in its definition of a pole but does not define this term. It is generally industry practice that electrical distribution is defined as 69 kV or less, poles included. However, distribution wires are sometimes attached to transmission poles, making it unclear whether transmission poles would be included under the definition of “pole” under the bill.⁵⁰

The bill adds significant areas of regulation to the Public Service Commission’s jurisdiction including telecommunications services, which the commission has not regulated since 2011, and wireless communications and cable-television providers, which have never been regulated by the commission. Given the stringent requirements of Florida’s Administrative Procedure Act, it is unlikely that the commission will be able to promulgate rules by October 1, 2021.⁵¹

The bill requires the commission to administer the grant program, however, the commission currently does not administer any grants. Florida’s Office of Broadband, housed within the Florida Department of Economic Opportunity, is charged with developing, marketing and promoting broadband internet services, pursuant to s. 364.0315, F.S., and may already have the capability to administer additional funds resulting from the monetary penalties imposed by this bill.⁵² The establishment of a trust fund may also be required to deposit penalties assessed for non-compliance with commission rules and may be required for disbursements associated with broadband grants.⁵³

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.02 and 366.04.

This bill creates section 366.97 of the Florida Statutes.

⁵⁰ See Public Service Commission, *Bill Analysis for SB 1944* (Mar. 15, 2021) (on file with the Senate Committee on Regulated Industries).

⁵¹ *Id.*

⁵² See Florida Department of Economic Opportunity, Office of Broadband, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited (Mar. 14, 2021)).

⁵³ See PSC, *Analysis, supra* at n. 49.

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 Albritton

26-01453-21

20211944__

1 A bill to be entitled
 2 An act relating to utility and communications poles;
 3 amending s. 366.02, F.S.; defining terms; amending s.
 4 366.04, F.S.; requiring the Public Service Commission
 5 to regulate and enforce rates, charges, terms, and
 6 conditions for pole attachments under certain
 7 circumstances; providing requirements for such rules;
 8 providing construction; providing situations under
 9 which a pole owner may deny access to the owner's pole
 10 on a nondiscriminatory basis; authorizing the
 11 commission to hear and resolve complaints concerning
 12 rates, charges, terms, conditions, voluntary
 13 agreements, and denial of access relative to pole
 14 attachments; requiring the commission, at the request
 15 of a party, to assume jurisdiction over certain
 16 complaints before the Federal Communications
 17 Commission; requiring the commission to adopt rules by
 18 a specified date; requiring the commission to regulate
 19 the safety, vegetation management, repair,
 20 replacement, maintenance, relocation, emergency
 21 response, and storm restoration requirements for
 22 certain plants and equipment of communications
 23 services providers; requiring the commission to adopt
 24 rules, including monetary penalties, by a specified
 25 date; creating s. 366.97, F.S.; providing legislative
 26 findings; requiring attaching entities to remove pole
 27 attachments from redundant poles within a specified
 28 timeframe after receipt of a written notice from the
 29 pole owner; requiring the commission to provide the

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30 form and requirements for such notice; authorizing a
 31 pole owner or its agent to transfer or relocate pole
 32 attachments of an attaching entity at the entity's
 33 expense under certain circumstances; providing an
 34 exception; authorizing a pole owner to remove and sell
 35 or dispose of certain abandoned pole attachments;
 36 requiring that the pole owner and its directors,
 37 officers, agents, and employees be held harmless under
 38 certain circumstances for such actions; authorizing
 39 the commission to require attaching entities to post
 40 certain security instruments by rule; authorizing
 41 certain pole owners to transfer legal title of a
 42 redundant pole to an attaching entity that has not
 43 removed a pole attachment within a specified
 44 timeframe; providing for such transfer of title;
 45 providing for the transfer of obligation,
 46 responsibility, and liability of a pole to the new
 47 owner upon such a transfer of title; requiring the
 48 commission to impose monetary penalties for
 49 violations; requiring the commission to provide grants
 50 to install and upgrade broadband infrastructure in
 51 this state from any monetary penalty collected;
 52 providing construction; requiring the commission to
 53 adopt rules by a specified date; providing a directive
 54 to the Division of Law Revision; providing an
 55 effective date.

56
 57 Be It Enacted by the Legislature of the State of Florida:
 58

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59 Section 1. Subsection (4) through (9) are added to section
60 366.02, Florida Statutes, to read:

61 366.02 Definitions.—As used in this chapter:

62 (4) "Attaching entity" means a person that is a local
63 exchange carrier, a public utility or an electric utility, a
64 communications services provider, or a cable television operator
65 who owns or controls pole attachments.

66 (5) "Communications services" has the same meaning as in s.
67 202.11.

68 (6) "Pole" means a pole, duct, conduit, or right-of-way
69 that is used for wire or wireless communications or electricity
70 distribution and that is owned in whole or in part by a pole
71 owner, or a streetlight fixture that is owned in whole or in
72 part by a public utility.

73 (7) "Pole attachments" means local exchange carrier,
74 electric, communications services, or cable television
75 facilities attached to a pole by an entity other than the pole
76 owner.

77 (8) "Pole owner" means a local exchange carrier, a public
78 utility or an electric utility, a communications services
79 provider, a cable television operator, or other public utility
80 which owns a pole used in whole or in part, for electrical
81 purposes or for any wire or wireless communications.

82 (9) "Redundant pole" means a pole owned or controlled by a
83 pole owner which is:

84 1. Within 50 feet of a new pole which is intended to
85 replace the old pole from which some or all of the pole
86 attachments have not been removed and transferred to the new
87 pole;

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88 2. Left standing after the pole owner has relocated its
89 facilities to underground but on which pole attachments of other
90 attaching entities remain; or

91 3. Left standing after a pole owner's attachments have been
92 removed from that route or location to accommodate a new route
93 or design for the delivery service.

94 Section 2. Subsections (8) and (9) are added to section
95 366.04, Florida Statutes, to read:

96 366.04 Jurisdiction of commission.—

97 (8)(a) The commission shall regulate and enforce rates,
98 charges, terms, and conditions for pole attachments in
99 situations in which a pole owner is unable to reach an agreement
100 with a party seeking pole attachments, including the types of
101 attachments regulated under 47 U.S.C. s. 224(a)(4), attachments
102 to streetlight fixtures, or attachments to poles owned by a
103 communications services provider, to ensure that such rates,
104 charges, terms, and conditions are just and reasonable. The
105 commission's authority under this subsection includes, but is
106 not limited to, the state regulatory authority referenced in 47
107 U.S.C. s. 224(c).

108 (b) In developing the rules, the commission shall consider
109 the interests of the subscribers and users of the services
110 offered through such pole attachments, as well as the interests
111 of the consumers of any pole owner providing such attachments.

112 (c) It is the intent of the Legislature to encourage
113 parties to enter into voluntary pole attachment agreements, and
114 this subsection may not be construed to prevent parties from
115 voluntarily entering into pole attachment agreements without
116 commission approval.

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117 (d) A party's right to nondiscriminatory access to a pole
 118 under this subsection is identical to the rights afforded under
 119 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its
 120 poles on a nondiscriminatory basis when there is insufficient
 121 capacity, for reasons of safety and reliability, and when
 122 required by generally applicable engineering purposes. A pole
 123 owner's evaluation of capacity, safety, reliability, and
 124 engineering requirements must consider relevant construction and
 125 reliability standards approved by the commission and may include
 126 an evaluation of the financial and performance-related
 127 capabilities of the entity requesting attachment.

128 (e) The commission may hear and resolve complaints
 129 concerning rates, charges, terms, conditions, voluntary
 130 agreements, or any denial of access relative to pole attachments
 131 with regard to the types of attachments regulated under 47
 132 U.S.C. s. 224, attachments to streetlight fixtures, or
 133 attachments owned by a communications services provider. Federal
 134 Communications Commission precedent is not binding upon the
 135 commission in the exercise of its authority under this
 136 subsection.

137 (f) Upon commencement of its authority under this
 138 subsection, the commission, upon the request of a party to a
 139 complaint proceeding pending before the Federal Communications
 140 Commission, shall assume jurisdiction over the matter if it is
 141 not yet subject to a final order of the Federal Communications
 142 Commission at the time of the request.

143 (g) The commission shall adopt rules by October 1, 2021, to
 144 administer and implement this subsection, including one or more
 145 appropriate formulae for apportioning costs.

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146 (9) (a) The commission shall regulate the safety, vegetation
 147 management, repair, replacement, maintenance, relocation,
 148 emergency response, and storm restoration requirements for
 149 poles, conduits, ducts, pipes, pole attachments, wires, cables,
 150 and related plant and equipment of communication services
 151 providers. The commission shall require communications services
 152 providers to establish storm reserve funds for the repair and
 153 replacement of facilities after natural disasters.

154 (b) The commission shall adopt rules by October 1, 2021, to
 155 administer and implement this subsection, including, but not
 156 limited to:

157 1. Mandatory pole inspections, including repair or
 158 replacement; vegetation management requirements for poles owned
 159 by providers of communications services; the establishment of
 160 storm reserve funds; and the sequential and timely removal of
 161 pole attachments; and

162 2. Monetary penalties to be imposed upon any communication
 163 services provider that fails to comply with any such rule of the
 164 commission.

165 Section 3. Section 366.97, Florida Statutes, is created to
 166 read:

167 366.97 Redundant poles; transfer of ownership; penalties.-

168 (1) The Legislature finds that:

169 (a) It is in the public interest for public utilities,
 170 communications services providers, and cable television
 171 operators that own poles to harden their infrastructure to
 172 strengthen the ability of their above-ground infrastructure to
 173 withstand extreme weather conditions, by and among other things,
 174 replacing older poles with newer, stronger poles; however, this

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175 work combined with the undergrounding of electrical facilities
 176 may result in redundant poles within public rights-of-way and
 177 easements for significant durations because owners of third-
 178 party pole attachments may not keep pace in removing their
 179 facilities from the old poles.

180 (b) Pole owners that set new poles are prevented from
 181 removing redundant poles when the pole attachments of other
 182 entities remain on the old poles. Such pole owners continue to
 183 incur liability as owners of poles they no longer use or want,
 184 but which continue to be used by other entities.

185 (c) Redundant poles in the public rights-of-way and
 186 easements are aesthetically unappealing and potentially create
 187 overcrowding of, and unsafe conditions in, the public rights-of-
 188 way and easements.

189 (d) It is in the public interest to timely and sequentially
 190 remove pole attachments from redundant poles and to transfer the
 191 ownership of poles from pole owners that are no longer using the
 192 poles to entities that continue to attach facilities to the
 193 poles.

194 (2) (a) An attaching entity must remove its pole attachments
 195 from a redundant pole within 90 calendar days after receipt of
 196 written notice from the pole owner requesting such removal. The
 197 commission shall provide the form and requirements for such
 198 notice.

199 (b) If an attaching entity fails to remove a pole
 200 attachment pursuant to paragraph (a), except to the extent
 201 excused by an event of force majeure or other good cause as
 202 determined by the commission, the pole owner or its agent may
 203 transfer or relocate the pole attachment to the new pole at the

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204 non-compliant attaching entity's expense. This subsection does
 205 not apply to an electric utility's pole attachments.

206 (c) If a pole attachment is abandoned or no longer in use
 207 by a noncompliant attaching entity, the pole owner or its agent
 208 may remove the pole attachment at the noncompliant attaching
 209 entity's expense and may sell or dispose of the pole attachment.
 210 The noncompliant attaching entity shall indemnify, defend, and
 211 hold harmless the pole owner and its directors, officers,
 212 agents, and employees from and against all liability, except to
 213 the extent of any finding of gross negligence or willful
 214 misconduct, including attorney fees and litigation costs,
 215 arising in connection with the removal, transfer, sale, or
 216 disposal of the pole attachments from a redundant pole by the
 217 pole owner.

218 (d) The commission may require by rule that an attaching
 219 entity post security instruments in favor of pole owners in
 220 amounts reasonably sufficient to cover the cost of the removal,
 221 transfer, sale, or disposal of pole attachments.

222 (3) (a) When a pole owner removes and relocates its overhead
 223 facilities or converts its overhead facilities to underground,
 224 in lieu of removal, transfer, sale, or disposal of the pole
 225 attachments as provided in subsection (2), the pole owner may
 226 transfer legal title of the redundant pole to an attaching
 227 entity that has not removed a pole attachment within 90 days
 228 after receipt of a notice to remove.

229 (b) Transfer of title shall occur by operation of law upon
 230 the date a written notice of title transfer is sent by the pole
 231 owner. The notice of title transfer must include pole
 232 identification numbers, if applicable, and must describe with

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233 specificity the locations of the pole or poles to be transferred
 234 and their corresponding remaining book value.

235 (c) Within 60 days after transferring title, the attaching
 236 entity shall remit payment to the transferor pole owner an
 237 amount equal to the total of the remaining book value for all
 238 poles listed in the notice of title transfer.

239 (d) A transferor pole owner may seek to enforce its rights
 240 under this subsection, including its right to payment, in the
 241 circuit court in whose jurisdiction the transferred poles are
 242 located. The transferor pole owner is entitled to prejudgment
 243 interest at the prevailing statutory rate, and the prevailing
 244 party in any such action is entitled to recover its reasonable
 245 attorney fees and court costs.

246 (e) Upon transfer of title, all obligation, responsibility,
 247 and liability incumbent upon a pole owner in this state
 248 including, but not limited to, safety, vegetation management,
 249 repair, replacement, maintenance, relocation, removal, emergency
 250 response, storm restoration, taxes, and third-party liability,
 251 shall immediately become the legal obligation, responsibility,
 252 and liability of the new pole owner. The transferor pole owner
 253 is relieved of all such obligation, responsibility, and
 254 liability immediately upon transfer of title.

255 (4) The commission shall impose monetary penalties upon any
 256 entity subject to its jurisdiction which is found to be in
 257 violation of this section. Upon petition by a pole owner, the
 258 commission may issue orders requiring the removal or transfer of
 259 pole attachments by noncompliant attaching entities and shall
 260 impose monetary penalties in accordance with this section.

261 (5) All monetary penalties assessed by the commission

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262 pursuant to this section must be used by the commission to
 263 provide grants for the installing and upgrading of broadband
 264 infrastructure in unserved and underserved rural and low-income
 265 areas of this state. The commission shall establish criteria for
 266 the award of grants from the fund to businesses and
 267 organizations that have demonstrated the ability to construct
 268 and install infrastructure and that have submitted an
 269 application and proposal detailing how the grant funds would
 270 further the objectives of this subsection to expand broadband
 271 services in unserved and underserved areas.

272 (6) This section may not be construed to do any of the
 273 following:

274 (a) Prevent a party at any time from entering into a
 275 voluntary agreement authorizing a pole owner to remove an
 276 attaching entity's pole attachment. It is the intent of the
 277 Legislature to encourage parties to enter into such voluntary
 278 agreements without commission approval.

279 (b) Impair the contract rights of a party to a valid pole
 280 attachment agreement in existence before the effective date of
 281 this act.

282 (7) The commission shall adopt rules by October 1, 2021, to
 283 implement this section, including rules providing for the
 284 sequential removal of all pole attachments from redundant poles
 285 and establishing monetary penalties to be imposed against any
 286 entity in violation of this section.

287 Section 4. The Division of Law Revision is directed to
 288 replace the phrase "the effective date of this act" wherever it
 289 occurs in this act with the date this act becomes a law.

290 Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/30/21

1946

Meeting Date

Bill Number (if applicable)

Topic Anchoring Limitation

Amendment Barcode (if applicable)

Name Foyt Ralston

Job Title _____

Address 9167 Shoal Creek Dr.

Phone 850-294-5390

Street

Tallahassee

Fl

Email foyt@foytralston.com

City

State

Zip

Speaking: For Against Information

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

Representing Friends of the Ortega River

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)*

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/30/2021

Meeting Date

SB 1946

Bill Number (if applicable)

Topic Anchoring Limitation Areas

Amendment Barcode (if applicable)

Name Joseph Salzverg ("Saul's-Verg")

Job Title Attorney and Lobbyist

Address 301 S. Bronough Street, Suite 600

Phone (850) 577-9090

Street

Tallahassee

FL

32301

Email joseph.salzverg@gray-robinson.com

City

State

Zip

Speaking: For Against Information

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

Representing City of Hollywood

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/30/2021

Meeting Date

1946

Bill Number (if applicable)

Topic Anchoring Limitation Areas

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-222-9684

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021

Meeting Date

CS/SB 1946

Bill Number (if applicable)

Topic Anchoring Limitation Areas

Amendment Barcode (if applicable)

Name Bonnie Basham

Job Title _____

Address 10797 Wadesboro Rd

Phone 8509337277

Street

Tallahassee

FL

32317-8

Email capital.ideas@att.net

City

State

Zip

Speaking: For Against Information

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

Representing Boat Owners of the United States (BOAT US)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1946

INTRODUCER: Community Affairs Committee; Environment and Natural Resources Committee; and Senator Polsky and others

SUBJECT: Anchoring Limitation Areas

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1946 provides that, notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which meets certain requirements imposed under the bill. The bill provides that the aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size;
- Not include any mooring fields; and
- Be clearly marked with signs and buoys.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area, except under existing exceptions.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation on anchoring, upon an inquiry by a law enforcement officer or agency. If the vessel owner or operator fails or refuses to provide such proof, the bill authorizes a law enforcement officer or agency to issue a citation, and later remove and impound the vessel.

A vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to existing procedures for abandoned or lost property and relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking, including notice to the public and an opportunity for public participation.

The bill expressly grandfathers-in the geographic areas already designated anchoring limitation areas in Florida Statutes.

II. Present Situation:

Fish and Wildlife Conservation Commission

The Division of Law Enforcement Boating and Waterways Section of the Florida Fish and Wildlife Conservation Commission (FWC) oversees and coordinates statewide regulatory waterway markers to ensure compliance with uniform markers and state boating and resource protection zones for the benefit of all waterway users and fish and wildlife resources in the state.¹ The Boating and Waterways Section takes public input and provides notice of proposed local boating-restricted areas.²

FWC's boating laws are enforced by the Division of Law Enforcement and its officers, county sheriffs and deputies, municipal police officers, and any other law enforcement officer.³ The Division of Law Enforcement manages the state's waterways to ensure boating safety for residents of and visitors to the state.⁴ This includes enforcing boating rules and regulations; coordinating boating safety campaigns and education; managing public waters and access to the waters; conducting boating accident investigations; identifying and removing derelict vessels; and investigating vessel theft and title fraud.⁵

Anchoring or Mooring

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.⁶ Mooring is accomplished through the use of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for

¹ FWC, *Waterway Management*, <https://myfwc.com/boating/waterway/> (last visited Mar. 16, 2021).

² *Id.*

³ Section 327.70(1), F.S.; *see s. 943.10(1), F.S.*, which 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 definition also 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.

⁴ Fish and Wildlife Conservation Commission (FWC), *Boating*, <https://myfwc.com/boating/> (last visited Mar. 17, 2021).

⁵ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Mar. 17, 2021). *See s. 327.70(1) and (4), F.S.*

⁶ Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.⁷

Local Regulation of Anchoring or Mooring of Vessels

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.⁸ Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.⁹

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures¹⁰ or live-aboard vessels¹¹ within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.¹² However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels and non-fishing commercial vessels, outside the marked boundaries of permitted mooring fields.¹³

Anchoring Limitation Areas

State law designates certain densely populated urban areas as anchoring limitation areas.¹⁴ These densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, include:

- The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County;
- Sunset Lake in Miami-Dade County; and
- The sections of Biscayne Bay in Miami-Dade County lying between:
 - Rivo Alto Island and Di Lido Island;
 - San Marino Island and San Marco Island; and

⁷ Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at https://www.flseagrant.org/wp-content/uploads/anchoring_away_5_12_update_web.pdf (last visited Mar. 17, 2021).

⁸ See s. 373.118, F.S., and Fla. Admin. Code R. 62-330.420(1).

⁹ See Fla. Admin. Code R. 62-330.420.

¹⁰ Section 327.02, F.S., defines the term “floating structure” as a “floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes an entity used as a residence, place of business, or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.”

¹¹ Section 327.02, F.S., defines the term “live-aboard vessel” as “a vessel used solely as a residence and not for navigation; a vessel represented as a place of business or a professional or other commercial enterprise; or a vessel for which a declaration of domicile has been filed. The definition expressly excludes commercial fishing boats.”

¹² Section 327.60(3), F.S.

¹³ Section 327.60(2)(f), F.S.

¹⁴ Section 327.4108(1), F.S.

- San Marco Island and Biscayne Island.¹⁵

To promote the public's use and enjoyment of these waterways, anchoring a vessel is prohibited at any time between 30 minutes after sunset and 30 minutes before sunrise in an anchoring limitation area.¹⁶ However, there are some exceptions where anchoring is permitted in an anchoring limitation area:

- When a vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors;
- If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors; or
- During certain special events.¹⁷

Certain government, construction, and fishing vessels are also exempt from anchoring limitation areas.¹⁸

Law enforcement officers or agencies may remove and impound, for up to 48 hours, vessels from anchoring limitation areas when a vessel operator who was previously issued a citation:

- Continues to anchor the vessel in an anchoring limitation area within 12 hours of being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.¹⁹ In addition to the civil penalty imposed by a citation, a vessel operator whose vessel has been impounded must pay all of the applicable removal and storage fees before the vessel is released.²⁰

An owner or operator of a vessel who anchors in an anchoring limitation area commits a noncriminal infraction and is subject to a uniform boating citation and penalties. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third or subsequent offense.²¹

Section 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws, be charged with a second degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.²²

¹⁵ *Id.*

¹⁶ Section 327.4108(2), F.S.

¹⁷ Section 327.4108(3), F.S.; *see also* s. 327.48, F.S.

¹⁸ Section 327.4108(4), F.S.

¹⁹ Section 327.4108(5), F.S.

²⁰ *Id.*

²¹ Section 327.73(1)(z), F.S.

²² Sections 775.082 and 775.083, F.S.

Procedures for Lost or Abandoned Property

When an article of lost or abandoned property is present on public property and is not easily removable, the law enforcement officer must place a notice of removal on the property. The law enforcement agency must then contact the Department of Highway Safety and Motor Vehicles to determine the name and address of the owner and must mail a copy of the notice to the owner.²³

If, after 5 days of posting the notice and mailing such notice, the owner has not removed the items from public property or shown reasonable cause for failure to do so, the law enforcement agency may retain the property for its own use, trade the property, donate the property, sell the property, or remove the property.²⁴ An owner that does not remove his or her property is liable for the costs of removal, storage, and destruction of the property, less any salvage value.²⁵ If the property is sold, the agency must deposit the balance of any proceeds, less the costs of transportation, storage, and notice, into an interest-bearing account no later than 30 days after the date of the sale.²⁶ The proceeds must be held for one year and the property owner is entitled to claim the balance of the proceeds by making application to the agency.²⁷

Relocation or Removal of Derelict Vessels

Section 823.11, F.S., allows for the relocation or removal of a derelict vessel²⁸ from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons. The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.²⁹ A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.³⁰

III. Effect of Proposed Changes:

The bill amends s. 327.4108, F.S., to provide that notwithstanding the existing prohibition on local regulation of anchoring of vessels outside of the marked boundaries of mooring fields, a county may establish an anchoring limitation area within densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic. The aggregate total of anchoring limitation areas in a county may not exceed 10 percent of the county's navigable waterways. Each anchoring limitation area must meet certain requirements imposed under the bill.

²³ Section 705.103(2), F.S.

²⁴ *Id.*

²⁵ Section 705.103(4), F.S.

²⁶ Section 705.103(3), F.S.

²⁷ *Id.*

²⁸ A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property. Section 823.11(1)(b), F.S.

²⁹ Section 823.11(3), F.S.

³⁰ *Id.*; see s. 705.103(4), F.S.

The bill provides that each anchoring limitation area must:

- Be less than 100 acres in size. The bill provides that the calculated size of the anchoring limitation area does not include any portion of the marked channel of the Florida Intracoastal Waterway contiguous to the anchoring limitation area;
- Not include any mooring fields; and
- Be clearly marked with all of the following:
 - Signs that provide reasonable notice to boaters which identify the duration of time beyond which anchoring is limited and identify the county ordinance with its enacting date by which the anchoring limitation area was created. The bill prohibits any ordinance adopted pursuant to the provisions in the bill from taking effect until reviewed and approved as being consistent with the requirements in the bill by FWC.
 - Buoys marking the boundary of the anchoring limitation area.

The bill prohibits a person from anchoring a vessel for more than 30 consecutive days in a 6-month period in an anchoring limitation area established under the bill.

The bill provides an opportunity for a vessel owner or operator to provide proof that the vessel has not exceeded the time limitation (a maximum of 30 days in a 6-month period) on anchoring in an anchoring limitation area, upon an inquiry by a law enforcement officer or agency. Such proof may include either documentation or electronic evidence, including, but not limited to, navigational devices or tracking devices, which shows that the vessel was in another location at least one mile away from the anchoring limitation area within a period of less than 30 days before the inquiry.

If the vessel owner or operator fails or refuses to provide proof that the vessel has not exceeded the time limitation (a maximum of 30 days in a 6-month period) on anchoring, the bill authorizes a law enforcement officer or agency to issue a citation for a violation of the anchoring limitation area. The law enforcement officer or agency is authorized remove and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator has been issued a citation for anchoring and does one of the following:

- Anchors the vessel in an anchoring limitation area within 12 hours after being issued a citation; or
- Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

The bill declares that a vessel that is the subject of more than three violations within 12 months, which resulted in dispositions other than acquittal or dismissal, is a public nuisance and subject to the procedures for lost and abandoned property and for derelict vessels, the procedures for relocation and removal of derelict vessels.

The bill requires FWC to initiate rulemaking by July 1, 2021, to provide criteria and procedures for reviewing applications to establish a new anchoring limitation area and procedures for public notice and participation. The bill requires the rulemaking to include, at a minimum, the following:

- Notice to the public. The bill requires FWC's Boating and Waterways Section to provide notice of the completed applications received, public meetings or hearings concerning applications, and denial or approval of applications on the section's web page and to all

parties listed in the Boating and Waterways Section's public distribution list for ordinances, which any member of the public may join.

- An opportunity for public participation. The bill authorizes members of the public to provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section. The bill authorizes members of the public to testify at the hearing or a FWC meeting and to submit relevant and material exhibits to the record of the proceeding if a public hearing or a review by the agency head is requested.

The bill deletes an obsolete provision tied to FWC's pilot program for regulation of mooring vessels outside of public mooring fields.

The bill reenacts s. 327.73(1)(z), F.S., which provides penalties for violations of anchoring limitation areas, to incorporate the changes made by the bill to s. 327.4108, F.S.

The bill expressly grandfathers-in the geographic areas already designated anchoring limitation areas in statute.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 327.4108 and 327.73 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 Community Affairs on March 30, 2021:

The committee substitute made a technical change to clarify that the geographic areas already designated as anchoring limitation areas in the statute are grandfathered-in.

CS by Environment and Natural Resources on March 22, 2021:

- Revises the requirements for newly established anchoring limitation areas to include that the area is less than 100 acres in size, not including certain areas of the Florida Intracoastal Waterway or any mooring fields.
- Clarifies the distinction between the provisions that apply to existing anchoring limitation areas and newly established anchoring limitation areas.
- Reverts the definition of “law enforcement officer or agency” to existing law.
- Clarifies that a vessel owner must receive a citation before a vessel may be removed or impounded.

B. Amendments:

None.



654046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/31/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Polsky) recommended the following:

Senate Amendment (with title amendment)

Delete line 36
and insert:
significant recreational boating traffic, are designated as and
shall be considered to be grandfathered-in

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

And the title is amended as follows:

Delete line 3



654046

11 and insert:
12 amending s. 327.4108, F.S.; providing that certain
13 areas are grandfathered-in anchoring limitation areas;
14 authorizing counties to

By the Committee on Environment and Natural Resources; and
Senators Polsky and Bean

592-03179-21

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1 A bill to be entitled
2 An act relating to anchoring limitation areas;
3 amending s. 327.4108, F.S.; authorizing counties to
4 establish anchoring limitation areas that meet certain
5 requirements; providing that specified established
6 anchoring limitation areas are exempt from specified
7 provisions; specifying size requirements for the
8 anchoring limitation areas; requiring the anchoring
9 limitation areas to be marked with signs and buoys
10 that meet certain requirements; prohibiting vessels
11 from anchoring in such areas for longer than a
12 specified time; requiring vessel owners or operators
13 in certain anchoring limitation areas to be allowed to
14 provide specified proof of compliance with certain
15 provisions; providing that vessels with repeat
16 offenses within a specified timeframe shall be
17 declared public nuisances and subject to certain
18 provisions; requiring the Fish and Wildlife
19 Conservation Commission to initiate rulemaking by a
20 certain date; providing requirements for such
21 rulemaking; removing applicability provisions relating
22 to the commission's recommendations; reenacting s.
23 327.73(1)(z), F.S., relating to noncriminal
24 infractions, to incorporate the amendment made to s.
25 327.4108, F.S., in a reference thereto; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29

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30 Section 1. Section 327.4108, Florida Statutes, is amended
31 to read:
32 327.4108 Anchoring of vessels in anchoring limitation
33 areas.-
34 (1) (a) The following densely populated urban areas, which
35 have narrow state waterways, residential docking facilities, and
36 significant recreational boating traffic, are designated as
37 anchoring limitation areas:
38 1. ~~(a)~~ The section of Middle River lying between Northeast
39 21st Court and the Intracoastal Waterway in Broward County.
40 2. ~~(b)~~ Sunset Lake in Miami-Dade County.
41 3. ~~(c)~~ The sections of Biscayne Bay in Miami-Dade County
42 lying between:
43 a. ~~1~~ Rivo Alto Island and Di Lido Island.
44 b. ~~2~~ San Marino Island and San Marco Island.
45 c. ~~3~~ San Marco Island and Biscayne Island.
46 (b) ~~(2)~~ To promote the public's use and enjoyment of the
47 designated waterway, except as provided in subsections (3) and
48 (4), a person may not anchor a vessel at any time during the
49 period between one-half hour after sunset and one-half hour
50 before sunrise in an anchoring limitation area designated under
51 this subsection.
52 (2) (a) Notwithstanding s. 327.60(2)(f), a county may
53 establish, in accordance with this subsection, an anchoring
54 limitation area within densely populated urban areas, which have
55 narrow state waterways, residential docking facilities, and
56 significant recreational boating traffic. The aggregate total of
57 anchoring limitation areas in a county may not exceed 10 percent
58 of the county's navigable waterways. Each anchoring limitation

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59 area must meet all of the following requirements:

60 1. Be less than 100 acres in size. For purposes of this
 61 subsection, the calculated size of the anchoring limitation area
 62 does not include any portion of the marked channel of the
 63 Florida Intracoastal Waterway contiguous to the anchoring
 64 limitation area;

65 2. Not include any mooring fields; and

66 3. Be clearly marked with all of the following:

67 a. Signs that provide reasonable notice to boaters
 68 identifying the duration of time beyond which anchoring is
 69 limited and identifying the county ordinance with its enacting
 70 date by which the anchoring limitation area was created. Any
 71 ordinance adopted pursuant to this subsection may not take
 72 effect until reviewed and approved as consistent with this
 73 subsection by the commission.

74 b. Buoys. The county that has created an anchoring
 75 limitation area shall install and maintain buoys marking the
 76 boundary of the anchoring limitation area.

77 (b) Except as provided in subsections (3) and (4), a person
 78 may not anchor a vessel for more than 30 consecutive days in any
 79 6-month period in an anchoring limitation area established
 80 pursuant to this subsection.

81 (3) Notwithstanding subsections (1) and ~~subsection~~ (2), a
 82 person may anchor a vessel in an anchoring limitation area:

83 (a) If the vessel suffers a mechanical failure that poses
 84 an unreasonable risk of harm to the vessel or the persons
 85 onboard unless the vessel anchors. The vessel may anchor for 3
 86 business days or until the vessel is repaired, whichever occurs
 87 first.

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88 (b) If imminent or existing weather conditions in the
 89 vicinity of the vessel pose an unreasonable risk of harm to the
 90 vessel or the persons onboard unless the vessel anchors. The
 91 vessel may anchor until weather conditions no longer pose such
 92 risk. During a hurricane or tropical storm, weather conditions
 93 are deemed to no longer pose an unreasonable risk of harm when
 94 the hurricane or tropical storm warning affecting the area has
 95 expired.

96 (c) During events described in s. 327.48 or other special
 97 events, including, but not limited to, public music
 98 performances, local government waterfront activities, or
 99 fireworks displays. A vessel may anchor for the lesser of the
 100 duration of the special event or 3 days.

101 (4) This section does not apply to:

102 (a) Vessels owned or operated by a governmental entity for
 103 law enforcement, firefighting, military, or rescue purposes.

104 (b) Construction or dredging vessels on an active job site.

105 (c) Vessels actively engaged in commercial fishing.

106 (d) Vessels engaged in recreational fishing if the persons
 107 onboard are actively tending hook and line fishing gear or nets.

108 (5) (a) As used in this subsection, the term "law
 109 enforcement officer or agency" means an officer or agency
 110 authorized to enforce this section pursuant to s. 327.70.

111 (b) 1. For a vessel in an anchoring limitation area
 112 established pursuant to subsection (2), upon an inquiry by a law
 113 enforcement officer or agency, a vessel owner or operator must
 114 be given an opportunity to provide proof that the vessel has not
 115 exceeded the limitations described in subsection (2). Such proof
 116 may include any of the following:

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117 a. Documentation showing that the vessel was in another
 118 location at least 1 mile away within a period of less than 30
 119 days before the inquiry.

120 b. Electronic evidence, including, but not limited to,
 121 navigational devices or tracking devices that show the vessel
 122 was in another location at least 1 mile away within a period of
 123 less than 30 days before the inquiry.

124 2. If a vessel owner or operator fails or refuses to
 125 provide proof that the vessel has not exceeded the limitations
 126 described in subsection (2), the law enforcement officer or
 127 agency may issue a citation for a violation of this section.

128 (c) ~~(b)~~ A law enforcement officer or agency may remove a
 129 vessel from an anchoring limitation area designated under
 130 subsection (1) or established pursuant to subsection (2) and
 131 impound the vessel for up to 48 hours, or cause such removal and
 132 impoundment, if the vessel operator, after being issued a
 133 citation for a violation of this section:

134 1. Anchors the vessel in violation of this section within
 135 12 hours after being issued the citation; or

136 2. Refuses to leave the anchoring limitation area after
 137 being directed to do so by a law enforcement officer or agency.

138 (d) A vessel that is the subject of more than three
 139 violations within 12 months which resulted in dispositions other
 140 than acquittal or dismissal shall be declared to be a public
 141 nuisance and subject to s. 705.103, and for a derelict vessel,
 142 subject to s. 823.11.

143 (e) ~~(c)~~ A law enforcement officer or agency acting under
 144 this subsection to remove or impound a vessel, or to cause such
 145 removal or impoundment, shall be held harmless for any damage to

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146 the vessel resulting from such removal or impoundment unless the
 147 damage results from gross negligence or willful misconduct.

148 (f) ~~(d)~~ A contractor performing removal or impoundment
 149 services at the direction of a law enforcement officer or agency
 150 pursuant to this subsection must:

151 1. Be licensed in accordance with United States Coast Guard
 152 regulations, as applicable.

153 2. Obtain and carry a current policy issued by a licensed
 154 insurance carrier in this state to insure against any accident,
 155 loss, injury, property damage, or other casualty caused by or
 156 resulting from the contractor's actions.

157 3. Be properly equipped to perform such services.

158 (g) ~~(e)~~ In addition to the civil penalty imposed under s.
 159 327.73(1)(z), the operator of a vessel that is removed and
 160 impounded pursuant to paragraph (c) ~~(b)~~ must pay all removal and
 161 storage fees before the vessel is released. A vessel removed
 162 pursuant to paragraph (c) ~~(b)~~ may not be impounded for longer
 163 than 48 hours.

164 (6) The commission shall initiate rulemaking by July 1,
 165 2021, to provide criteria and procedures for reviewing
 166 applications to establish an anchoring limitation area pursuant
 167 to subsection (2) and procedures for public notice and
 168 participation pursuant to this subsection. The rulemaking must
 169 include, at a minimum, all of the following:

170 (a) Notice to the public. The Boating and Waterways Section
 171 of the Fish and Wildlife Conservation Commission shall provide
 172 notice of completed applications received, public meetings or
 173 hearings concerning applications, and denial or approval of
 174 applications on the section's web page and to all parties listed

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175 in the Boating and Waterways Section's public distribution list
 176 for ordinances, which any member of the public may join.

177 (b) An opportunity for public participation. Members of the
 178 public may provide written comments, recommendations, requests,
 179 inquiries, or other correspondence to the Boating and Waterways
 180 Section. If a public hearing or a review by the agency head is
 181 requested, members of the public may testify at the hearing or
 182 commission meeting and may submit relevant and material exhibits
 183 to the record of the proceeding.

184 ~~(7)(6)~~ A violation of this section is punishable as
 185 provided in s. 327.73(1)(z).

186 ~~(7) This section shall remain in effect notwithstanding the~~
 187 ~~Legislature's adoption of the commission's recommendations for~~
 188 ~~the regulation of mooring vessels outside of public mooring~~
 189 ~~fields pursuant to s. 327.4105.~~

190 Section 2. For the purpose of incorporating the amendment
 191 made by this act to section 327.4108, Florida Statutes, in a
 192 reference thereto, paragraph (z) of subsection (1) of section
 193 327.73, Florida Statutes, is reenacted to read:

194 327.73 Noncriminal infractions.—

195 (1) Violations of the following provisions of the vessel
 196 laws of this state are noncriminal infractions:

197 (z) Section 327.4108, relating to the anchoring of vessels
 198 in anchoring limitation areas, for which the penalty is:

- 199 1. For a first offense, up to a maximum of \$50.
- 200 2. For a second offense, up to a maximum of \$100.
- 201 3. For a third or subsequent offense, up to a maximum of
- 202 \$250.

203

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204 Any person cited for a violation of any provision of this
 205 subsection shall be deemed to be charged with a noncriminal
 206 infraction, shall be cited for such an infraction, and shall be
 207 cited to appear before the county court. The civil penalty for
 208 any such infraction is \$50, except as otherwise provided in this
 209 section. Any person who fails to appear or otherwise properly
 210 respond to a uniform boating citation shall, in addition to the
 211 charge relating to the violation of the boating laws of this
 212 state, be charged with the offense of failing to respond to such
 213 citation and, upon conviction, be guilty of a misdemeanor of the
 214 second degree, punishable as provided in s. 775.082 or s.
 215 775.083. A written warning to this effect shall be provided at
 216 the time such uniform boating citation is issued.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 2008

INTRODUCER: Senator Diaz

SUBJECT: Tourist and Convention Development Taxes

DATE: March 25, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

The Local Option Tourist Development Act authorizes counties to levy five separate taxes on transient rental transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from 3 percent to 6 percent. Current law authorizes counties to levy and spend local option TDTs as a mechanism for funding various tourism-related uses. Current law only requires a referendum for one of these taxes. The other four can be imposed through local ordinances enacted by governing bodies.

Certain counties or sub-parts of counties are authorized to levy convention development taxes (CDTs) on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of 1 percent to a maximum of 3 percent. CDTs are adopted by local ordinances.

The bill authorizes all TDT or CDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires the imposition or increase of all TDTs and CDTs to be approved by referendum.

The bill makes each of the five TDTs stand-alone, independent propositions for renewal by removing the condition precedents related to the levy of the additional 1 percent tax and the additional sports facility tax. Specifically, the bill eliminates the requirement that a county must impose the original TDT for at least three years before imposing the additional 1 percent tax. Also, the bill eliminates the requirement that a county must impose the initial professional sports franchise facility tax before imposing the additional professional sports franchise facility tax.

The Revenue Estimating Conference has not reviewed the bill for potential revenue impacts.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Tourist Development Taxes

Florida law permits counties to impose local option taxes on short-term¹ rentals or leases of accommodations.² The taxes are generally referred to as "tourist³ development taxes" but consist of several separate tax levies. The taxes include:

- 1 or 2 Percent Tax:⁴ The county's governing board may levy this tax at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:⁵ This tax may be levied by an extraordinary vote⁶ of a county's governing board or by referendum approval, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.
- High Tourism Impact Tax:⁷ By an extraordinary vote of the county's governing board, a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.⁸
- Professional Sports Franchise Facility Tax:⁹ In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied, by a majority vote of the governing board, to pay debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:¹⁰ A county that levies the professional sports franchise facility tax may levy an additional 1 percent tax to be used for the same purposes. This tax must be approved by a majority plus one vote of the membership of the board of county commissioners.

Depending on a county's eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number

¹ Section 125.0104(3)(a), F.S., provides that the tax applies to rentals or leases of 6 months or less.

² Section 125.0104, F.S.

³ "Tourist" means a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a). Section 125.103(b)2., F.S.

⁴ Section 125.0104(3)(c), F.S.

⁵ Section 125.0104(3)(d), F.S.

⁶ "Extraordinary vote" is not defined by law, but by its plain definition would appear to mean something greater than an ordinary vote by simple majority. *See* Op. Att'y Gen. Fla. 2010-05.

⁷ Section 125.0104(3)(m), F.S.

⁸ A county may be designated as having a "high tourism impact" by the Department of Revenue as provided by s. 125.0104(3)(m)2., F.S. The tax is currently levied by Broward, Monroe, Orange, Osceola, Palm Beach, and Pinellas counties. Additionally, Hillsborough, Lee, and Walton counties are eligible to levy it.

⁹ Section 125.0104(3)(l), F.S.

¹⁰ Section 125.0104(3)(n), F.S.

of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.¹¹

2020 TDT Rates & Number of Counties	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	9	65
Levying:	63	54	45	7	30

These local option taxes may be administered by the Department of Revenue (DOR) or by one or more local government units. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.¹²

TDT Adoption Process

Each county that levies the original 1 or 2 percent tax must have a tourist development council.¹³ A tourist development council is a group of residents from the county appointed by the county governing board.¹⁴ The tourist development council, among other duties, makes recommendations to the county governing board for the effective operation of the particular projects or uses of the TDT revenue.¹⁵

Before the original 1 or 2 percent TDT authorization, the levy must be approved by a countywide referendum.¹⁶ Additional TDT levies must be authorized by a vote of the county's governing board or by a countywide referendum's voter approval.¹⁷ Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,¹⁸ including a plan for tourist development prepared by the tourist development council.¹⁹ The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy and a list of the tax's proposed uses, and the approximate cost for each project or use.²⁰ The plan for tourist development may not be substantially amended except by an ordinance enacted by a majority's affirmative vote plus one additional governing board member.²¹

¹¹ Office of Economic and Demographic Research, *2020 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties*, available at: <http://edr.state.fl.us/Content/local-government/data/county-municipal/2020LOTTRates.pdf>, (published Dec. 19, 2019) (last visited Mar. 25, 2021).

¹² See s. 125.0104(3)(b) and (d), F.S.

¹³ Section 125.0104(4)(e), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 125.0104(6), F.S.

¹⁷ Section 125.0104(3)(d), F.S.

¹⁸ Section 125.0104(4)(a), F.S.

¹⁹ Section 125.0104(4), F.S.

²⁰ See s. 125.0104(4), F.S.

²¹ See s. 125.0104(4), F.S. The provisions found in s. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

Authorized Uses of TDT Revenue

Tourist development tax revenues may be used to construct tourism-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used to:²²

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
 - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
 - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- Promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- Promote and advertise tourism in the state;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies;
- Finance beach park facilities or beach improvement, maintenance, nourishment, restoration, and erosion control; or
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council, and only if the following five conditions are satisfied:
 - \$10 million in tourist development tax revenue was received the year before expenditure;
 - The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;
 - No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues;
 - At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism; and
 - An independent professional analysis, performed at the county tourist development council's expense, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

The use of TDT revenue for any purpose not authorized in the statute is expressly prohibited.²³

Convention Development Taxes

The Convention Development Tax Act²⁴ authorizes certain counties or sub-parts of counties to levy convention development taxes on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of one percent to a maximum of three percent:

- The consolidated county convention tax may be levied at two percent.²⁵

²² Section 125.0104(5)(a), F.S.

²³ Section 125.0104(5)(e), F.S.

²⁴ Section 212.0305, F.S.

²⁵ Section 212.0305(4)(a), F.S.

- The charter county convention tax may be levied at three percent.²⁶
- The special district, special, and subcounty convention tax may be levied up to three percent.²⁷

Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy the maximum convention development tax allowable in their respective jurisdictions.²⁸

CDT Adoption Process

CDT levies must be authorized under an ordinance enacted by the county's governing body.²⁹ A certified copy of the ordinance imposing the levy must be furnished by the county to DOR within 10 days after approval of such ordinance.³⁰ The effective date of imposition of the levy can be the first day of any month at least 60 days after enacting the ordinance. Revenues must be deposited in a convention development trust fund established by the county before receiving any CDT funds.³¹

The charter county development tax has an exception for municipalities in which a municipal tourist tax is levied. A resolution prohibiting the imposition of the charter county convention development levy within such a municipality has been adopted.³² The county imposes the convention development levy in all other county areas except municipalities with a municipal tourist tax and has adopted a resolution. No CDT funds may be used in a municipality that has adopted such a resolution. In Miami-Dade County, three jurisdictions have a municipal tourist tax and have adopted a resolution under this provision. Those jurisdictions are Bal Harbour, Miami Beach, and Surfside.³³

Authorized Uses of CDT Revenue

Generally, the revenues raised by CDT levies may be used for capital construction of convention centers and other tourist-related facilities and tourism promotion; however, the authorized uses vary by levy.

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104, F.S., to revise the requirements for the adoption, imposition, and use of TDT.

²⁶ Section 212.0305(4)(b), F.S.

²⁷ Section 212.0305(4)(c),(d), and (e), F.S.

²⁸ Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/> (last visited Mar. 25, 2021).

²⁹ Section 212.0305(4)(b)1., F.S.

³⁰ Section 212.0305(4)(b)6., F.S.

³¹ Section 212.0305(4)(b)7., F.S.

³² Section 212.0305(4)(b)3., F.S.

³³ Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/> (last visited Mar. 25, 2021).

The bill prohibits the additional 1% TDT levy from being used for debt service or refinancing existing facilities unless approved in a referendum election by a majority of the electors voting in such election in the county subcounty special taxing district.

The bill authorizes all TDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires all existing, new, or increased TDTs to be approved by referendum. Any existing TDTs must be renewed on or before July 1, 2026, in a referendum. However, the bill exempts the proceeds of any taxes initially levied before July 1, 2021, which have been pledged to secure and liquidate revenue bonds or revenue refunding bonds from this expiration until the retirement of those bonds. The bill provides that the authority to levy and impose TDT expires 5 years after the date the authority was approved in an election. The authority may be renewed for subsequent 5-year periods if each 5-year renewal is approved in a referendum.

The bill makes each of the five TDTs stand-alone, independent propositions for renewal by removing the condition precedents related to the additional 1 percent tax and the additional sports facility tax. Specifically, the bill eliminates the requirement that a county must impose the original TDT for at least three years before imposing the additional 1 percent tax. Also, the bill eliminates the requirement that a county must impose the initial professional sports franchise facility tax before imposing the additional professional sports franchise facility tax.

Section 2 amends s. 212.0305, F.S., to revise the requirements for the adoption, imposition, and use of CDT. The bill authorizes all CDT revenue to be used to finance flood mitigation projects or improvements. The bill requires all existing, new, or increased CDTs to be approved by referendum. Any existing CDTs must be renewed on or before July 1, 2026, in a referendum. However, the bill exempts the proceeds of any taxes initially levied before July 1, 2021, which have been pledged to secure and liquidate revenue bonds or revenue refunding bonds from this expiration until the retirement of those bonds.

The bill provides that the authority to levy and impose CDT expires 5 years after the date the authority was approved in an election. The authority may be renewed for subsequent 5-year periods if each 5-year renewal is approved in a referendum.

The bill requires the governing board of a county levying a CDT to place a question on the ballot at a regular or special election held within the county, substantially as follows:

....FOR the Convention Development Tax.
....AGAINST the Convention Development Tax.

If a majority of the electors voting on the question approve the levy, the ordinance will take effect at a specified time.

Section 3 provides an effective date of July 1, 2021.

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

Article VII, section 18(b) of the Florida Constitution states “[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

The bill may implicate this constitutional restriction by reducing the authority of counties to raise revenues through imposing TDTs via ordinance.

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:**

The Revenue Estimating Conference has not estimated the revenue impacts of the bill on local governments.

B. Private Sector Impact:

The bill may positively impact the private sector from local investment in flood mitigation projects and improvements, both from the direct investment and the resulting resilience to flooding damage.

C. Government Sector Impact:

The bill may have a net negative fiscal impact on current TDT and CDT revenues if the electors of a political subdivision disapprove of the tax levy in a referendum.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 125.0104 and 212.0305 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (d), (l), (m), and (n) of subsection (3), paragraphs (a) and (d) of subsection (5), paragraph (a) of subsection (6), and paragraph (b) of subsection (7) of section 125.0104, Florida Statutes, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—



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11 (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

12 (d) In addition to any 1-percent or 2-percent tax imposed
13 under paragraph (c), the governing board of the county may levy,
14 impose, and set an additional 1 percent of each dollar above the
15 tax rate set under paragraph (c) ~~by the extraordinary vote of~~
16 ~~the governing board~~ for the purposes set forth in subsection (5)
17 ~~or~~ by ordinance subject to referendum approval by the registered
18 electors within the county or subcounty special district, in
19 accordance with subsection (6). ~~No county shall levy, impose,~~
20 ~~and set the tax authorized under this paragraph unless the~~
21 ~~county has imposed the 1-percent or 2-percent tax authorized~~
22 ~~under paragraph (c) for a minimum of 3 years prior to the~~
23 ~~effective date of the levy and imposition of the tax authorized~~
24 ~~by this paragraph.~~ Revenues raised by the additional tax
25 authorized under this paragraph may ~~shall~~ not be used for debt
26 service on or refinancing of existing facilities as specified in
27 subparagraph (5)(a)1. unless approved in a referendum election
28 by a majority of the electors voting in such election in the
29 county or the subcounty special taxing district ~~by a resolution~~
30 ~~adopted by an extraordinary majority of the total membership of~~
31 ~~the governing board of the county.~~ If the 1-percent or 2-percent
32 tax authorized in paragraph (c) is levied within a subcounty
33 special taxing district, the additional tax authorized in this
34 paragraph shall only be levied therein. The provisions of
35 paragraphs (4)(a)-(d) do ~~shall~~ not apply to the adoption of the
36 additional tax authorized in this paragraph. The effective date
37 of the levy and imposition of the tax authorized under this
38 paragraph shall be the first day of the second month following
39 approval of the ordinance by referendum, as set forth in



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40 subsection (6), or the first day of any subsequent month as may
41 be specified in the ordinance ~~the governing board or the first~~
42 ~~day of any subsequent month as may be specified in the~~
43 ~~ordinance.~~ A certified copy of such ordinance shall be furnished
44 by the county to the Department of Revenue within 10 days after
45 approval of such ordinance.

46 (1) In addition to any other tax which is imposed pursuant
47 to this section, a county may impose up to an additional 1-
48 percent tax on the exercise of the privilege described in
49 paragraph (a) by ordinance, subject to referendum approval by
50 the registered electors within the county in accordance with
51 subsection (6), ~~by majority vote of the governing board of the~~
52 ~~county in order~~ to:

53 1. Pay the debt service on bonds issued to finance the
54 construction, reconstruction, or renovation of a professional
55 sports franchise facility, or the acquisition, construction,
56 reconstruction, or renovation of a retained spring training
57 franchise facility, either publicly owned and operated, or
58 publicly owned and operated by the owner of a professional
59 sports franchise or other lessee with sufficient expertise or
60 financial capability to operate such facility, and to pay the
61 planning and design costs incurred prior to the issuance of such
62 bonds.

63 2. Pay the debt service on bonds issued to finance the
64 construction, reconstruction, or renovation of a convention
65 center, and to pay the planning and design costs incurred prior
66 to the issuance of such bonds.

67 3. Pay the operation and maintenance costs of a convention
68 center for a period of up to 10 years. Only counties that have



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69 elected to levy the tax for the purposes authorized in
70 subparagraph 2. may use the tax for the purposes enumerated in
71 this subparagraph. Any county that elects to levy the tax for
72 the purposes authorized in subparagraph 2. after July 1, 2000,
73 may use the proceeds of the tax to pay the operation and
74 maintenance costs of a convention center for the life of the
75 bonds.

76 4. Promote and advertise tourism in the State of Florida
77 and nationally and internationally; however, if tax revenues are
78 expended for an activity, service, venue, or event, the
79 activity, service, venue, or event shall have as one of its main
80 purposes the attraction of tourists as evidenced by the
81 promotion of the activity, service, venue, or event to tourists.

82 5. Finance flood mitigation projects or improvements.

83
84 The provision of paragraph (b) which prohibits any county
85 authorized to levy a convention development tax pursuant to s.
86 212.0305 from levying more than the 2-percent tax authorized by
87 this section, and the provisions of paragraphs (4) (a)-(d), do
88 ~~shall~~ not apply to the additional tax authorized in this
89 paragraph. The effective date of the levy and imposition of the
90 tax authorized under this paragraph shall be the first day of
91 the second month following approval of the ordinance by
92 referendum as set forth in subsection (6), ~~the governing board~~
93 or the first day of any subsequent month as may be specified in
94 the ordinance. A certified copy of such ordinance shall be
95 furnished by the county to the Department of Revenue within 10
96 days after approval of such ordinance.

97 (m)1. In addition to any other tax which is imposed



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98 pursuant to this section, a high tourism impact county may
99 impose an additional 1-percent tax on the exercise of the
100 privilege described in paragraph (a) by ordinance subject to
101 referendum approval by the registered electors within the
102 county, as set forth in subsection (6) ~~by extraordinary vote of~~
103 ~~the governing board of the county~~. The tax revenues received
104 pursuant to this paragraph shall be used for one or more of the
105 authorized uses pursuant to subsection (5).

106 2. A county is considered to be a high tourism impact
107 county after the Department of Revenue has certified to such
108 county that the sales subject to the tax levied pursuant to this
109 section exceeded \$600 million during the previous calendar year,
110 or were at least 18 percent of the county's total taxable sales
111 under chapter 212 where the sales subject to the tax levied
112 pursuant to this section were a minimum of \$200 million, except
113 that no county authorized to levy a convention development tax
114 pursuant to s. 212.0305 shall be considered a high tourism
115 impact county. Once a county qualifies as a high tourism impact
116 county, it shall retain this designation for the period the tax
117 is levied pursuant to this paragraph.

118 3. The provisions of paragraphs (4) (a)-(d) do ~~shall~~ not
119 apply to the adoption of the additional tax authorized in this
120 paragraph. The effective date of the levy and imposition of the
121 tax authorized under this paragraph shall be the first day of
122 the second month following approval of the ordinance referendum,
123 as set forth in subsection (6), ~~by the governing board~~ or the
124 first day of any subsequent month as may be specified in the
125 ordinance. A certified copy of such ordinance shall be furnished
126 by the county to the Department of Revenue within 10 days after



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127 approval of such ordinance.

128 (n) In addition to any other tax that is imposed under this
129 section, a county ~~that has imposed the tax under paragraph (1)~~
130 may impose an additional tax that is no greater than 1 percent
131 on the exercise of the privilege described in paragraph (a) by
132 ordinance subject to referendum approval by the registered
133 electors within the county as set forth in subsection (6) by a
134 ~~majority plus one vote of the membership of the board of county~~
135 ~~commissioners in order to:~~

136 1. Pay the debt service on bonds issued to finance:

137 a. The construction, reconstruction, or renovation of a
138 facility either publicly owned and operated, or publicly owned
139 and operated by the owner of a professional sports franchise or
140 other lessee with sufficient expertise or financial capability
141 to operate such facility, and to pay the planning and design
142 costs incurred prior to the issuance of such bonds for a new
143 professional sports franchise as defined in s. 288.1162.

144 b. The acquisition, construction, reconstruction, or
145 renovation of a facility either publicly owned and operated, or
146 publicly owned and operated by the owner of a professional
147 sports franchise or other lessee with sufficient expertise or
148 financial capability to operate such facility, and to pay the
149 planning and design costs incurred prior to the issuance of such
150 bonds for a retained spring training franchise.

151 2. Promote and advertise tourism in the State of Florida
152 and nationally and internationally; however, if tax revenues are
153 expended for an activity, service, venue, or event, the
154 activity, service, venue, or event shall have as one of its main
155 purposes the attraction of tourists as evidenced by the



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156 promotion of the activity, service, venue, or event to tourists.

157 3. Finance flood mitigation projects or improvements.

158

159 A county that imposes the tax authorized in this paragraph may
160 not expend any ad valorem tax revenues for the acquisition,
161 construction, reconstruction, or renovation of a facility for
162 which tax revenues are used pursuant to subparagraph 1. The
163 provision of paragraph (b) which prohibits any county authorized
164 to levy a convention development tax pursuant to s. 212.0305
165 from levying more than the 2-percent tax authorized by this
166 section does ~~shall~~ not apply to the additional tax authorized by
167 this paragraph in counties which levy convention development
168 taxes pursuant to s. 212.0305(4)(a). Subsection (4) does not
169 apply to the adoption of the additional tax authorized in this
170 paragraph. The effective date of the levy and imposition of the
171 tax authorized under this paragraph is the first day of the
172 second month following approval of the ordinance by referendum,
173 as prescribed by subsection (6), ~~by the board of county~~
174 ~~commissioners~~ or the first day of any subsequent month specified
175 in the ordinance. A certified copy of such ordinance shall be
176 furnished by the county to the Department of Revenue within 10
177 days after approval of the ordinance.

178 (5) AUTHORIZED USES OF REVENUE.—

179 (a) All tax revenues received pursuant to this section by a
180 county imposing the tourist development tax shall be used by
181 that county for the following purposes only:

182 1. To acquire, construct, extend, enlarge, remodel, repair,
183 improve, maintain, operate, or promote one or more:

184 a. Publicly owned and operated convention centers, sports



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185 stadiums, sports arenas, coliseums, or auditoriums within the
186 boundaries of the county or subcounty special taxing district in
187 which the tax is levied;

188 b. Auditoriums that are publicly owned but are operated by
189 organizations that are exempt from federal taxation pursuant to
190 26 U.S.C. s. 501(c)(3) and open to the public, within the
191 boundaries of the county or subcounty special taxing district in
192 which the tax is levied; or

193 c. Aquariums or museums that are publicly owned and
194 operated or owned and operated by not-for-profit organizations
195 and open to the public, within the boundaries of the county or
196 subcounty special taxing district in which the tax is levied;

197 2. To promote zoological parks that are publicly owned and
198 operated or owned and operated by not-for-profit organizations
199 and open to the public;

200 3. To promote and advertise tourism in this state and
201 nationally and internationally; however, if tax revenues are
202 expended for an activity, service, venue, or event, the
203 activity, service, venue, or event must have as one of its main
204 purposes the attraction of tourists as evidenced by the
205 promotion of the activity, service, venue, or event to tourists;

206 4. To fund convention bureaus, tourist bureaus, tourist
207 information centers, and news bureaus as county agencies or by
208 contract with the chambers of commerce or similar associations
209 in the county, which may include any indirect administrative
210 costs for services performed by the county on behalf of the
211 promotion agency;

212 5. To finance beach park facilities, or beach, channel,
213 estuary, or lagoon improvement, maintenance, renourishment,



214 restoration, and erosion control, including construction of
215 beach groins and shoreline protection, enhancement, cleanup, or
216 restoration of inland lakes and rivers to which there is public
217 access as those uses relate to the physical preservation of the
218 beach, shoreline, channel, estuary, lagoon, or inland lake or
219 river. However, any funds identified by a county as the local
220 matching source for beach renourishment, restoration, or erosion
221 control projects included in the long-range budget plan of the
222 state's Beach Management Plan, pursuant to s. 161.091, or funds
223 contractually obligated by a county in the financial plan for a
224 federally authorized shore protection project may not be used or
225 loaned for any other purpose. In counties of fewer than 100,000
226 population, up to 10 percent of the revenues from the tourist
227 development tax may be used for beach park facilities; ~~or~~

228 6. To acquire, construct, extend, enlarge, remodel, repair,
229 improve, maintain, operate, or finance public facilities within
230 the boundaries of the county or subcounty special taxing
231 district in which the tax is levied, if the public facilities
232 are needed to increase tourist-related business activities in
233 the county or subcounty special district and are recommended by
234 the county tourist development council created pursuant to
235 paragraph (4) (e). Tax revenues may be used for any related land
236 acquisition, land improvement, design and engineering costs, and
237 all other professional and related costs required to bring the
238 public facilities into service. As used in this subparagraph,
239 the term "public facilities" means major capital improvements
240 that have a life expectancy of 5 or more years, including, but
241 not limited to, transportation, sanitary sewer, solid waste,
242 drainage, potable water, and pedestrian facilities. Tax revenues



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243 may be used for these purposes only if the following conditions
244 are satisfied:

245 a. In the county fiscal year immediately preceding the
246 fiscal year in which the tax revenues were initially used for
247 such purposes, at least \$10 million in tourist development tax
248 revenue was received;

249 b. The county governing board approves the use for the
250 proposed public facilities by a vote of at least two-thirds of
251 its membership;

252 c. No more than 70 percent of the cost of the proposed
253 public facilities will be paid for with tourist development tax
254 revenues, and sources of funding for the remaining cost are
255 identified and confirmed by the county governing board;

256 d. At least 40 percent of all tourist development tax
257 revenues collected in the county are spent to promote and
258 advertise tourism as provided by this subsection; and

259 e. An independent professional analysis, performed at the
260 expense of the county tourist development council, demonstrates
261 the positive impact of the infrastructure project on tourist-
262 related businesses in the county; or

263 7. Up to 25 percent to finance flood mitigation projects or
264 improvements.

265
266 Subparagraphs 1. and 2. may be implemented through service
267 contracts and leases with lessees that have sufficient expertise
268 or financial capability to operate such facilities.

269 (d) The revenues to be derived from the tourist development
270 tax may be pledged to secure and liquidate revenue bonds issued
271 by the county for the purposes set forth in subparagraphs (a)1.,



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272 2., ~~and~~ 5., 6., and 7. or for the purpose of refunding bonds
273 previously issued for such purposes, or both; however, no more
274 than 50 percent of the revenues from the tourist development tax
275 may be pledged to secure and liquidate revenue bonds or revenue
276 refunding bonds issued for the purposes set forth in
277 subparagraph (a)5. Such revenue bonds and revenue refunding
278 bonds may be authorized and issued in such principal amounts,
279 with such interest rates and maturity dates, and subject to such
280 other terms, conditions, and covenants as the governing board of
281 the county shall provide. The Legislature intends that this
282 paragraph be full and complete authority for accomplishing such
283 purposes, but such authority is supplemental and additional to,
284 and not in derogation of, any powers now existing or later
285 conferred under law.

286 (6) REFERENDUM.—

287 (a) An ~~No~~ ordinance enacted by any county levying or
288 increasing the tax authorized by this section may not ~~paragraphs~~
289 ~~(3) (b) and (c) shall~~ take effect until the ordinance levying,
290 ~~and~~ imposing, or increasing the tax has been approved in a
291 referendum election by a majority of the electors voting in such
292 election in the county or by a majority of the electors voting
293 in the subcounty special tax district affected by the tax.

294 (7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS.—

295 Notwithstanding any other provision of this section, if the plan
296 for tourist development approved by the governing board of the
297 county, as amended pursuant to paragraph (4) (d), includes the
298 acquisition, construction, extension, enlargement, remodeling,
299 repair, or improvement of a publicly owned and operated
300 convention center, sports stadium, sports arena, coliseum, or



301 auditorium, or museum or aquarium that is publicly owned and
302 operated or owned and operated by a not-for-profit organization,
303 the county ordinance levying and imposing the tax automatically
304 expires upon the later of:

305 (b) The expiration of any agreement by the county for the
306 operation or maintenance, or both, of a publicly owned and
307 operated convention center, sports stadium, sports arena,
308 coliseum, auditorium, aquarium, or museum. However, this does
309 not preclude that county from amending the ordinance to extend
310 ~~extending~~ the tax, subject to referendum approval in accordance
311 with subsection (6), to the extent that the board of the county
312 determines to be necessary to provide funds to operate,
313 maintain, repair, or renew and replace a publicly owned and
314 operated convention center, sports stadium, sports arena,
315 coliseum, auditorium, aquarium, or museum or from enacting an
316 ordinance that takes effect subject to ~~without~~ referendum
317 approval in accordance with subsection (6), unless the original
318 ~~referendum required ordinance expiration, pursuant to the~~
319 ~~provisions of this section reimposing a tourist development tax,~~
320 upon or following the expiration of the previous ordinance.

321 Section 2. Subsection (4) of section 212.0305, Florida
322 Statutes, is amended, and subsection (6) is added to that
323 section, to read:

324 212.0305 Convention development taxes; intent;
325 administration; authorization; use of proceeds.—

326 (4) AUTHORIZATION TO LEVY; USE OF PROCEEDS; OTHER
327 REQUIREMENTS.—

328 (a) *Consolidated government levy for convention*
329 *development.*—



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330 1. Each county that operates under a government
331 consolidated with that of one or more municipalities in the
332 county may impose, pursuant to an ordinance subject to
333 referendum approval by the registered electors within the
334 county, in accordance with subsection (6) ~~enacted by the~~
335 ~~governing body of the county~~, a levy on the exercise within its
336 boundaries of the taxable privilege of leasing or letting
337 transient rental accommodations described in subsection (3) at
338 the rate of 2 percent of each dollar and major fraction of each
339 dollar of the total consideration charged therefor. The proceeds
340 of this levy shall be known as the consolidated county
341 convention development tax.

342 2. The county shall furnish to the department, within 10
343 days after referendum approval of the ordinance imposing the
344 levy, a copy of the ordinance. The effective date of imposition
345 of the levy must be the first day of the second month following
346 approval of the ordinance by referendum, as set forth in
347 subsection (6), or the first day of any subsequent month as may
348 be specified in the ordinance ~~any month that is at least 60 days~~
349 ~~after enactment of the ordinance.~~

350 3. All consolidated county convention development moneys,
351 including any interest accrued thereon, received by a county
352 imposing the levy must be used in any of the following manners,
353 although the utilization authorized in sub-subparagraph a. shall
354 apply only to municipalities with a population of 10,000 or
355 more:

- 356 a. To promote and advertise tourism;
- 357 b. To extend, enlarge, and improve existing publicly owned
358 convention centers in the county;



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359 c. To construct a multipurpose
360 convention/coliseum/exhibition center or the maximum components
361 thereof as funds permit in the county; ~~and~~
362 d. To acquire, construct, extend, enlarge, remodel, repair,
363 improve, or maintain one or more convention centers, stadiums,
364 exhibition halls, arenas, coliseums, or auditoriums; and
365 e. Up to 25 percent to finance flood mitigation projects or
366 improvements.

367 4. For the purposes of completion of any project under this
368 paragraph, tax revenues and interest accrued may be used:
369 a. As collateral, pledged, or hypothecated for projects
370 authorized by this paragraph, including bonds issued in
371 connection therewith; or
372 b. As a pledge or capital contribution in conjunction with
373 a partnership, joint venture, or other business arrangement
374 between the county and one or more business entities for
375 projects authorized by this paragraph.

376 5.a. The county may designate or appoint an authority to
377 administer and disburse such proceeds and any other related
378 source of revenue. However, the annual budget of the authority
379 is subject to approval of the governing body of the county.

380 b. Except as otherwise provided by law, one-half of the
381 proceeds of the tax which are collected within a municipality
382 the government of which is not consolidated with that of the
383 county must, at the request of the governing body of the
384 municipality, be remitted to the municipality. The revenue
385 remitted to a municipality under this sub-subparagraph may be
386 used by the municipality only for the purposes and in the manner
387 authorized in this paragraph, but the municipality may enter



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388 into an interlocal agreement with the county or with any other
389 municipality in the county to use such revenue to jointly
390 finance any project authorized by this paragraph. This sub-
391 subparagraph does not apply to the distribution to the county of
392 any convention development tax revenues necessary to repay the
393 principal of or the interest on any bonds issued under sub-
394 subparagraph 4.a. before May 29, 1984. Notwithstanding this sub-
395 subparagraph, if the governing body of such a municipality
396 adopts a resolution stating that the municipality is unable to
397 use such revenue for any purpose authorized in this paragraph,
398 the municipality may use the revenue to acquire and develop
399 municipal parks, lifeguard stations, or athletic fields.

400 6. The consolidated county convention development tax shall
401 be in addition to any other levy imposed under this section.

402 7. Revenues collected and returned to the county must be
403 deposited in a convention development trust fund, which must be
404 established by the county as a condition precedent to receipt of
405 such funds.

406 (b) *Charter county levy for convention development.*—

407 1. Each county, as defined in s. 125.011(1), may impose,
408 under an ordinance subject to referendum approval by the
409 registered electors within the county, in accordance with
410 subsection (6) enacted by the governing body of the county, a
411 levy on the exercise within its boundaries of the taxable
412 privilege of leasing or letting transient rental accommodations
413 described in subsection (3) at the rate of 3 percent of the
414 total consideration charged therefor. The proceeds of this levy
415 shall be known as the charter county convention development tax.

416 2. All charter county convention development moneys,



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417 including any interest accrued thereon, received by a county
418 imposing the levy shall be used as follows:

419 a. Two-thirds of the proceeds shall be used to extend,
420 enlarge, and improve the largest existing publicly owned
421 convention center in the county.

422 b. One-third of the proceeds shall be used to construct a
423 new multipurpose convention/coliseum/exhibition center/stadium
424 or the maximum components thereof as funds permit in the most
425 populous municipality in the county.

426 c. After the completion of any project under sub-
427 subparagraph a., the tax revenues and interest accrued under
428 sub-subparagraph a. may be used to acquire, construct, extend,
429 enlarge, remodel, repair, improve, plan for, operate, manage, or
430 maintain one or more convention centers, stadiums, exhibition
431 halls, arenas, coliseums, auditoriums, flood mitigation projects
432 and improvements, or golf courses, and may be used to acquire
433 and construct an intercity light rail transportation system as
434 described in the Light Rail Transit System Status Report to the
435 Legislature dated April 1988, which shall provide a means to
436 transport persons to and from the largest existing publicly
437 owned convention center in the county and the hotels north of
438 the convention center and to and from the downtown area of the
439 most populous municipality in the county as determined by the
440 county.

441 d. After completion of any project under sub-subparagraph
442 b., the tax revenues and interest accrued under sub-subparagraph
443 b. may be used, as determined by the county, to operate an
444 authority created pursuant to subparagraph 4. or to acquire,
445 construct, extend, enlarge, remodel, repair, improve, operate,



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446 or maintain one or more convention centers, stadiums, exhibition
447 halls, arenas, coliseums, auditoriums, flood mitigation projects
448 and improvements, golf courses, or related buildings and parking
449 facilities in the most populous municipality in the county.

450 e. For the purposes of completion of any project pursuant
451 to this paragraph, tax revenues and interest accrued may be
452 used:

453 (I) As collateral, pledged, or hypothecated for projects
454 authorized by this paragraph, including bonds issued in
455 connection therewith; or

456 (II) As a pledge or capital contribution in conjunction
457 with a partnership, joint venture, or other business arrangement
458 between a municipality and one or more business entities for
459 projects authorized by this paragraph.

460 3. The governing body of each municipality in which a
461 municipal tourist tax is levied may adopt a resolution
462 prohibiting imposition of the charter county convention
463 development levy within such municipality. If the governing body
464 adopts such a resolution, the convention development levy shall
465 be imposed by the county in all other areas of the county except
466 such municipality. No funds collected pursuant to this paragraph
467 may be expended in a municipality which has adopted such a
468 resolution.

469 4.a. Before the county enacts an ordinance imposing the
470 levy, the county shall notify the governing body of each
471 municipality in which projects are to be developed pursuant to
472 sub-subparagraph 2.a., sub-subparagraph 2.b., sub-subparagraph
473 2.c., or sub-subparagraph 2.d. As a condition precedent to
474 receiving funding, the governing bodies of such municipalities



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475 shall designate or appoint an authority that shall have the sole
476 power to:

477 (I) Approve the concept, location, program, and design of
478 the facilities or improvements to be built in accordance with
479 this paragraph and to administer and disburse such proceeds and
480 any other related source of revenue.

481 (II) Appoint and dismiss the authority's executive
482 director, general counsel, and any other consultants retained by
483 the authority. The governing body shall have the right to
484 approve or disapprove the initial appointment of the authority's
485 executive director and general counsel.

486 b. The members of each such authority shall serve for a
487 term of not less than 1 year and shall be appointed by the
488 governing body of such municipality. The annual budget of such
489 authority shall be subject to approval of the governing body of
490 the municipality. If the governing body does not approve the
491 budget, the authority shall use as the authority's budget the
492 previous fiscal year budget.

493 c. The authority, by resolution to be adopted from time to
494 time, may invest and reinvest the proceeds from the convention
495 development tax and any other revenues generated by the
496 authority in the same manner that the municipality in which the
497 authority is located may invest surplus funds.

498 5. The charter county convention development levy shall be
499 in addition to any other levy imposed pursuant to this section.

500 6. A certified copy of the ordinance imposing the levy
501 shall be furnished by the county to the department within 10
502 days after referendum approval of such ordinance. The effective
503 date of imposition of the levy shall be the first day of the



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504 second month following approval of the ordinance by referendum,
505 as set forth in subsection (6), or the first day of any
506 subsequent month as may be specified in the ordinance ~~any month~~
507 ~~at least 60 days after enactment of the ordinance.~~

508 7. Revenues collected pursuant to this paragraph shall be
509 deposited in a convention development trust fund, which shall be
510 established by the county as a condition precedent to receipt of
511 such funds.

512 (c) *Special district levy for convention development.*—

513 1. Each county which was chartered under Art. VIII of the
514 State Constitution and which on January 1, 1984, levied a
515 tourist advertising ad valorem tax within a special taxing
516 district in that county may impose or increase, pursuant to an
517 ordinance subject to referendum approval by the registered
518 electors within the county, in accordance with subsection (6)
519 ~~enacted by the governing body of the county~~, a levy within the
520 boundaries of such special taxing district on the exercise of
521 the taxable privilege of leasing or letting transient rental
522 accommodations described in subsection (3) at a total rate of up
523 to 3 percent of each dollar and major fraction of each dollar of
524 the total consideration charged therefor. The proceeds of this
525 levy shall be known as the special district convention
526 development tax.

527 2. The county shall designate or appoint an authority to
528 administer and disburse the proceeds of such levy and any
529 revenue related to the levy authorized by this paragraph. The
530 members of such authority shall be selected from persons
531 involved in the tourism and lodging industries doing business
532 within such special district. Not less than a majority of the



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533 members shall be selected from persons doing business in the
534 lodging industry. Members shall serve at the pleasure of the
535 governing body of such county and shall serve without
536 compensation. The annual budget of such authority shall be
537 subject to approval of the governing body of the county. The
538 authority shall consist of 11 members, who shall annually select
539 a chair from among their members.

540 3. The county shall have no power to levy and impose the
541 tourist advertising ad valorem tax in such district on or after
542 January 1 of the year following the date of the adoption of the
543 levy authorized in this paragraph. All special district
544 convention development moneys, including any interest accrued
545 thereon, received by a county imposing the special district
546 convention development levy shall be used for the following
547 purposes only:

548 a. To promote and advertise tourism.~~†~~

549 b. To fund convention bureaus, tourist bureaus, tourist
550 information centers, and news bureaus.

551 c. Up to 25 percent to finance flood mitigation projects or
552 improvements.

553 4. The special district convention development tax shall be
554 in addition to any other levy imposed pursuant to this section.

555 5. A certified copy of the ordinance imposing the levy
556 shall be furnished by the county to the department within 10
557 days after referendum approval of such ordinance. The effective
558 date of the levy shall be the first day of the second month
559 following approval of the ordinance by referendum, as set forth
560 in subsection (6), or the first day of any subsequent month as
561 may be specified in the ordinance ~~any month at least 60 days~~



562 ~~after enactment of the ordinance.~~

563 6. Revenues collected and returned to the county shall be
564 deposited in a convention development trust fund, which shall be
565 established by the county as a condition precedent to receipt of
566 such funds.

567 (d) *Special levy for convention development.*—

568 1. Each county which was chartered under Art. VIII of the
569 State Constitution and which on January 1, 1984, levied a
570 tourist advertising ad valorem tax within a special taxing
571 district in that county may impose or increase, pursuant to an
572 ordinance subject to referendum approval by the registered
573 electors within the county, in accordance with subsection (6)
574 ~~enacted by the governing body of the county~~, a levy outside the
575 boundaries of such special taxing district and to the southeast
576 of State Road 415, on the exercise of the taxable privilege of
577 leasing or letting transient rental accommodations described in
578 subsection (3), at a total rate of up to 3 percent of each
579 dollar and major fraction of each dollar of the total
580 consideration charged therefor. The proceeds of this levy shall
581 be known as the special convention development tax.

582 2. The county shall designate or appoint an authority to
583 administer and disburse the proceeds of such levy and any
584 revenue related to the levy authorized by this paragraph. The
585 members of the authority shall be selected from persons doing
586 business within the area in which the tax is levied. Not less
587 than three of the members shall be selected from persons doing
588 business in the lodging industry. Members shall serve at the
589 pleasure of the governing body of the county and shall serve
590 without compensation. The annual budget of the authority shall



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591 be subject to approval of the governing body of the county. The
592 authority shall consist of seven members, who shall annually
593 select a chair from among their members.

594 3. All special convention development moneys, including any
595 interest accrued thereon, received by a county imposing the
596 special convention development levy shall be used for the
597 following purposes only:

598 a. To promote and advertise tourism.~~†~~

599 b. To fund convention bureaus, tourist bureaus, tourist
600 information centers, and news bureaus.

601 c. Up to 25 percent to finance flood mitigation projects or
602 improvements.

603 4. The special convention development tax shall be in
604 addition to any other levy imposed pursuant to this section.

605 5. A certified copy of the ordinance imposing the levy
606 shall be furnished by the county to the department within 10
607 days after referendum approval of the ordinance. The effective
608 date of the levy shall be the first day of the second month
609 following approval of the ordinance by referendum, as set forth
610 in subsection (6), or the first day of any subsequent month as
611 may be specified in the ordinance ~~any month at least 60 days~~
612 ~~after enactment of the ordinance.~~

613 6. Revenues collected and returned to the county shall be
614 deposited in a separate convention development trust fund, which
615 shall be established by the county as a condition precedent to
616 receipt of such funds.

617 (e) *Subcounty levy for convention development.*—

618 1. Each county which was chartered under Art. VIII of the
619 State Constitution and which on January 1, 1984, levied a



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620 tourist advertising ad valorem tax within a special taxing
621 district in that county may impose or increase, pursuant to an
622 ordinance subject to referendum approval by the registered
623 electors within the county, in accordance with subsection (6)
624 ~~enacted by the governing body of the county~~, a levy outside the
625 boundaries of such special taxing district and to the northwest
626 of State Road 415, on the exercise of the taxable privilege of
627 leasing or letting transient rental accommodations described in
628 subsection (3), at a total rate of up to 3 percent of each
629 dollar and major fraction of each dollar of the total
630 consideration charged therefor. The proceeds of this levy shall
631 be known as the subcounty convention development tax.

632 2. The county shall designate or appoint an authority to
633 administer and disburse the proceeds of such levy and any
634 revenue related to the levy authorized by this paragraph. The
635 members of the authority shall be selected from persons doing
636 business within the area in which the tax is levied. Not less
637 than three of the members shall be selected from persons doing
638 business in the lodging industry. Members shall serve at the
639 pleasure of the governing body of the county and shall serve
640 without compensation. The annual budget of the authority shall
641 be subject to approval of the governing body of the county. The
642 authority shall consist of seven members, who shall annually
643 select a chair from among their members.

644 3. All subcounty convention development moneys, including
645 any interest accrued thereon, received by a county imposing the
646 subcounty convention development levy shall be used for the
647 following purposes only:

648 a. To promote and advertise tourism.†



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649 b. To fund convention bureaus, tourist bureaus, tourist
650 information centers, and news bureaus.

651 c. To finance flood mitigation projects or improvements.

652 4. The subcounty convention development tax shall be in
653 addition to any other levy imposed pursuant to this section.

654 5. A certified copy of the ordinance imposing the levy
655 shall be furnished by the county to the department within 10
656 days after referendum approval of the ordinance. The effective
657 date of the levy shall be the first day of the second month
658 following approval of the ordinance by referendum, as set forth
659 in subsection (6), or the first day of any subsequent month as
660 may be specified in the ordinance any month at least 60 days
661 after enactment of the ordinance.

662 6. Revenues collected and returned to the county shall be
663 deposited in a separate convention development trust fund, which
664 shall be established by the county as a condition precedent to
665 receipt of such funds.

666 (6) REFERENDUM.—

667 (a) An ordinance enacted by any county levying or
668 increasing the tax authorized pursuant to this section may not
669 take effect until the ordinance levying, imposing, or increasing
670 the tax has been approved in a referendum election by a majority
671 of the electors voting in such election in the county.

672 (b) The governing board of the county levying the tax shall
673 place a question on the ballot at a regular or special election
674 to be held within the county, substantially as follows:

675 FOR the Convention Development Tax.

676 AGAINST the Convention Development Tax.

677 (c) If a majority of the electors voting on the question



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678 approve the levy, the ordinance shall be deemed to be in effect
679 on the first day of the second month following approval, or the
680 first day of any subsequent month as may be specified in the
681 ordinance.

682 Section 3. Section 212.03055, Florida Statutes, is amended
683 to read:

684 212.03055 ~~Super~~ Majority vote required for levy at rate in
685 excess of 2 percent under ch. 95-290.—A special taxing district
686 may not levy a tax under chapter 95-290, Laws of Florida, at a
687 rate in excess of 2 percent unless the levy of such tax is
688 approved in a referendum election by a majority of the electors
689 voting in such election in the ~~approved by a super majority (a~~
690 ~~majority plus one) vote of the members of the governing body of~~
691 ~~the~~ county in which the special taxing district is located.

692 Section 4. This act shall take effect July 1, 2021.

693
694 ===== T I T L E A M E N D M E N T =====

695 And the title is amended as follows:

696 Delete everything before the enacting clause
697 and insert:

698 A bill to be entitled
699 An act relating to tourist and convention development
700 taxes; amending s. 125.0104, F.S.; deleting provisions
701 that require a county or subcounty special taxing
702 district to receive an extraordinary vote of the
703 governing board to increase tourist development taxes
704 for certain purposes; specifying that certain tourist
705 development taxes imposed by ordinance are subject to
706 referendum approval by a majority vote of the electors



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707 voting in such election; specifying the date on which
708 certain ordinance-imposed tourist development taxes
709 become effective; authorizing a county to impose a
710 tourist development tax to finance flood mitigation
711 projects or improvements; amending s. 212.0305, F.S.;
712 specifying that certain tourist development taxes
713 imposed by ordinance are subject to referendum
714 approval by a majority vote of the electors voting in
715 such election; specifying the date on which certain
716 ordinance-imposed tourist development taxes become
717 effective; authorizing convention development taxes to
718 finance flood mitigation projects or improvements;
719 authorizing certain counties to impose a specified
720 district convention development tax to finance flood
721 mitigation projects or improvements; providing a form
722 to be placed on the ballot; amending s. 212.03055,
723 F.S.; providing that a special taxing district may not
724 increase a tax without approval in a referendum by a
725 majority vote of the electors; providing an effective
726 date.



905544

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Community Affairs (Diaz) recommended the following:

1 **Senate Amendment to Amendment (285024) (with title**
2 **amendment)**

3
4 Between lines 681 and 682
5 insert:

6 (d) This subsection does not apply to a project that has
7 been submitted for and has received an approved development
8 order pursuant to chapter 163 from the local governing body
9 before December 31, 2021.

10



905544

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

12 And the title is amended as follows:

13 Delete line 722

14 and insert:

15 to be placed on the ballot; providing applicability;

16 amending s. 212.03055,

By Senator Diaz

36-01258-21

20212008__

1 A bill to be entitled
 2 An act relating to tourist and convention development
 3 taxes; amending s. 125.0104, F.S.; deleting a
 4 provision requiring an extraordinary vote of a
 5 governing board for a county or subcounty special
 6 taxing district to increase its tourist development
 7 taxes; specifying that certain tourist development
 8 taxes require a majority of the electors voting in a
 9 referendum to become effective; specifying the date on
 10 which certain ordinance-imposed tourist development
 11 taxes become effective; authorizing a county to impose
 12 a tourist development tax to finance flood mitigation
 13 projects or improvements; correcting a cross-
 14 reference; requiring a high tourism impact county to
 15 impose an additional specified tax upon certain
 16 privileges by ordinance, subject to approval by a
 17 majority vote of the electors; deleting the
 18 requirement for an extraordinary vote to approve such
 19 taxes; authorizing a high tourism county to impose an
 20 additional tax for flood mitigation projects or
 21 improvements; specifying that certain taxing authority
 22 expires 5 years after the date the authority was
 23 approved in an election; authorizing the renewal of
 24 the authority, subject to a referendum; providing a
 25 procedure for renewing the tourist development tax;
 26 providing an exception to the expiration mandate;
 27 deleting provisions specifying procedures for
 28 repealing a tax that was previously approved by
 29 referendum; amending s. 212.0305, F.S.; authorizing

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

36-01258-21

20212008__

30 convention development taxes to finance flood
 31 mitigation projects or improvements; authorizing
 32 certain counties to impose a specified district
 33 convention development tax to finance flood mitigation
 34 projects or improvements; requiring existing
 35 ordinances levying convention development taxes to
 36 expire after a specified date unless approved by a
 37 majority of the voters of the county or special tax
 38 district; specifying that certain taxing authority
 39 expires 5 years after the date the authority was
 40 approved in an election; authorizing the renewal of
 41 the authority, subject to a referendum; providing a
 42 procedure for renewing such authority; prescribing the
 43 form of the ballot statement; providing that
 44 ordinances are effective upon majority approval by
 45 electors; providing expiration of the tax is not
 46 effective under certain circumstances; providing an
 47 effective date.

48
 49 Be It Enacted by the Legislature of the State of Florida:

50
 51 Section 1. Paragraphs (d), (l), (m), and (n) of subsection
 52 (3), paragraphs (a) and (d) of subsection (5), and paragraphs
 53 (a) and (d) of subsection (6) of section 125.0104, Florida
 54 Statutes, are amended, and paragraphs (f), (g), and (h) are
 55 added to subsection (4) of that section, to read:
 56 125.0104 Tourist development tax; procedure for levying;
 57 authorized uses; referendum; enforcement.—
 58 (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

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59 (d) In addition to any 1-percent or 2-percent tax imposed
 60 under paragraph (c), the governing board of the county may levy,
 61 impose, and set an additional 1 percent of each dollar above the
 62 tax rate set under paragraph (c) ~~by the extraordinary vote of~~
 63 ~~the governing board~~ for the purposes set forth in subsection (5)
 64 or by ordinance subject to referendum approval by the registered
 65 electors within the county or subcounty special district, in
 66 accordance with subsection (6). ~~No county shall levy, impose,~~
 67 ~~and set the tax authorized under this paragraph unless the~~
 68 ~~county has imposed the 1-percent or 2-percent tax authorized~~
 69 ~~under paragraph (c) for a minimum of 3 years prior to the~~
 70 ~~effective date of the levy and imposition of the tax authorized~~
 71 ~~by this paragraph.~~ Revenues raised by the additional tax
 72 authorized under this paragraph may ~~shall~~ not be used for debt
 73 service on or refinancing of existing facilities as specified in
 74 subparagraph (5) (a)1. unless approved in a referendum election
 75 by a majority of the electors voting in such election in the
 76 county or the subcounty special taxing district ~~by a resolution~~
 77 ~~adopted by an extraordinary majority of the total membership of~~
 78 ~~the governing board of the county.~~ If the 1-percent or 2-percent
 79 tax authorized in paragraph (c) is levied within a subcounty
 80 special taxing district, the additional tax authorized in this
 81 paragraph shall only be levied therein. The provisions of
 82 paragraphs ~~(4) (a)-(e) do (4) (a)-(d) shall~~ not apply to the
 83 adoption of the additional tax authorized in this paragraph. The
 84 effective date of the levy and imposition of the tax authorized
 85 under this paragraph shall be the first day of the second month
 86 following approval of the ordinance by referendum, as set forth
 87 in subsection (6), or the first day of any subsequent month as

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88 ~~may be specified in the ordinance the governing board or the~~
 89 ~~first day of any subsequent month as may be specified in the~~
 90 ~~ordinance.~~ A certified copy of such ordinance shall be furnished
 91 by the county to the Department of Revenue within 10 days after
 92 approval of such ordinance.

93 (1) In addition to any other tax which is imposed pursuant
 94 to this section, a county may impose up to an additional 1-
 95 percent tax on the exercise of the privilege described in
 96 paragraph (a) by ordinance, subject to referendum approval by
 97 the registered electors within the county in accordance with
 98 subsection (6), by majority vote of the governing board of the
 99 county in order to:

100 1. Pay the debt service on bonds issued to finance the
 101 construction, reconstruction, or renovation of a professional
 102 sports franchise facility, or the acquisition, construction,
 103 reconstruction, or renovation of a retained spring training
 104 franchise facility, either publicly owned and operated, or
 105 publicly owned and operated by the owner of a professional
 106 sports franchise or other lessee with sufficient expertise or
 107 financial capability to operate such facility, and to pay the
 108 planning and design costs incurred prior to the issuance of such
 109 bonds.

110 2. Pay the debt service on bonds issued to finance the
 111 construction, reconstruction, or renovation of a convention
 112 center, and to pay the planning and design costs incurred prior
 113 to the issuance of such bonds.

114 3. Pay the operation and maintenance costs of a convention
 115 center for a period of up to 10 years. Only counties that have
 116 elected to levy the tax for the purposes authorized in

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36-01258-21 20212008__

117 subparagraph 2. may use the tax for the purposes enumerated in
 118 this subparagraph. Any county that elects to levy the tax for
 119 the purposes authorized in subparagraph 2. after July 1, 2000,
 120 may use the proceeds of the tax to pay the operation and
 121 maintenance costs of a convention center for the life of the
 122 bonds.

123 4. Promote and advertise tourism in the State of Florida
 124 and nationally and internationally; however, if tax revenues are
 125 expended for an activity, service, venue, or event, the
 126 activity, service, venue, or event shall have as one of its main
 127 purposes the attraction of tourists as evidenced by the
 128 promotion of the activity, service, venue, or event to tourists.

129 5. Finance flood mitigation projects or improvements.
 130

131 The provision of paragraph (b) which prohibits any county
 132 authorized to levy a convention development tax pursuant to s.
 133 212.0305 from levying more than the 2-percent tax authorized by
 134 this section, and the provisions of paragraphs (4) (a)-(e) do
 135 ~~(4) (a)-(d), shall~~ not apply to the additional tax authorized in
 136 this paragraph. The effective date of the levy and imposition of
 137 the tax authorized under this paragraph shall be the first day
 138 of the second month following approval of the ordinance by
 139 referendum as set forth in subsection (6), the governing board
 140 or the first day of any subsequent month as may be specified in
 141 the ordinance. A certified copy of such ordinance shall be
 142 furnished by the county to the Department of Revenue within 10
 143 days after approval of such ordinance.

144 (m)1. In addition to any other tax which is imposed
 145 pursuant to this section, a high tourism impact county may

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146 impose an additional 1-percent tax on the exercise of the
 147 privilege described in paragraph (a) by ordinance, subject to
 148 referendum approval by the registered electors within the
 149 county, as set forth in subsection (6) by extraordinary vote of
 150 ~~the governing board of the county.~~ The tax revenues received
 151 pursuant to this paragraph shall be used for one or more of the
 152 authorized uses pursuant to subsection (5).

153 2. A county is considered to be a high tourism impact
 154 county after the Department of Revenue has certified to such
 155 county that the sales subject to the tax levied pursuant to this
 156 section exceeded \$600 million during the previous calendar year,
 157 or were at least 18 percent of the county's total taxable sales
 158 under chapter 212 where the sales subject to the tax levied
 159 pursuant to this section were a minimum of \$200 million, except
 160 that no county authorized to levy a convention development tax
 161 pursuant to s. 212.0305 shall be considered a high tourism
 162 impact county. Once a county qualifies as a high tourism impact
 163 county, it shall retain this designation for the period the tax
 164 is levied pursuant to this paragraph.

165 3. The provisions of paragraphs (4) (a)-(e) do ~~(4) (a)-(d)~~
 166 ~~shall~~ not apply to the adoption of the additional tax authorized
 167 in this paragraph. The effective date of the levy and imposition
 168 of the tax authorized under this paragraph shall be the first
 169 day of the second month following approval of the ordinance
 170 referendum, as set forth in subsection (6), by the governing
 171 ~~board~~ or the first day of any subsequent month as may be
 172 specified in the ordinance. A certified copy of such ordinance
 173 shall be furnished by the county to the Department of Revenue
 174 within 10 days after approval of such ordinance.

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175 (n) In addition to any other tax that is imposed under this
 176 section, a county ~~that has imposed the tax under paragraph (1)~~
 177 may impose an additional tax that is no greater than 1 percent
 178 on the exercise of the privilege described in paragraph (a) by
 179 ordinance subject to referendum approval by the registered
 180 electors within the county as set forth in subsection (6) ~~by a~~
 181 ~~majority plus one vote of the membership of the board of county~~
 182 ~~commissioners in order to:~~

- 183 1. Pay the debt service on bonds issued to finance:
- 184 a. The construction, reconstruction, or renovation of a
 185 facility either publicly owned and operated, or publicly owned
 186 and operated by the owner of a professional sports franchise or
 187 other lessee with sufficient expertise or financial capability
 188 to operate such facility, and to pay the planning and design
 189 costs incurred prior to the issuance of such bonds for a new
 190 professional sports franchise as defined in s. 288.1162.
- 191 b. The acquisition, construction, reconstruction, or
 192 renovation of a facility either publicly owned and operated, or
 193 publicly owned and operated by the owner of a professional
 194 sports franchise or other lessee with sufficient expertise or
 195 financial capability to operate such facility, and to pay the
 196 planning and design costs incurred prior to the issuance of such
 197 bonds for a retained spring training franchise.
- 198 2. Promote and advertise tourism in the State of Florida
 199 and nationally and internationally; however, if tax revenues are
 200 expended for an activity, service, venue, or event, the
 201 activity, service, venue, or event shall have as one of its main
 202 purposes the attraction of tourists as evidenced by the
 203 promotion of the activity, service, venue, or event to tourists.

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204 3. Finance flood mitigation projects or improvements.

205
 206 A county that imposes the tax authorized in this paragraph may
 207 not expend any ad valorem tax revenues for the acquisition,
 208 construction, reconstruction, or renovation of a facility for
 209 which tax revenues are used pursuant to subparagraph 1. The
 210 provision of paragraph (b) which prohibits any county authorized
 211 to levy a convention development tax pursuant to s. 212.0305
 212 from levying more than the 2-percent tax authorized by this
 213 section ~~does shall~~ not apply to the additional tax authorized by
 214 this paragraph in counties which levy convention development
 215 taxes pursuant to s. 212.0305(4) (a). The provisions of
 216 paragraphs (4)(a)-(e) do not apply to the adoption of the
 217 additional tax authorized in this paragraph ~~Subsection (4) does~~
 218 ~~not apply to the adoption of the additional tax authorized in~~
 219 ~~this paragraph~~. The effective date of the levy and imposition of
 220 the tax authorized under this paragraph is the first day of the
 221 second month following approval of the ordinance by referendum,
 222 as prescribed by subsection (6), ~~by the board of county~~
 223 ~~commissioners~~ or the first day of any subsequent month specified
 224 in the ordinance. A certified copy of such ordinance shall be
 225 furnished by the county to the Department of Revenue within 10
 226 days after approval of the ordinance.

227 (4) ORDINANCE LEVY TAX; PROCEDURE.—

228 (f) The authority to levy and impose a tax pursuant to this
 229 section expires 5 years after the date the authority was
 230 approved in an election, but the authority may be renewed for
 231 subsequent 5-year periods if each 5-year renewal is approved in
 232 a referendum called and held pursuant to subsection (6).

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233 (g) Any tax imposed pursuant to this section must be
 234 renewed on or before July 1, 2026, in a referendum called and
 235 held pursuant to subsection (6).

236 (h) In any case where the proceeds of a tax levied pursuant
 237 to this section have been pledged to secure and liquidate
 238 revenue bonds or revenue refunding bonds as authorized by this
 239 section, the expiration of the tax is not effective with respect
 240 to any portion of taxes initially levied before July 1, 2021,
 241 which has been pledged or is being used to support bonds until
 242 the retirement of those bonds.

243 (5) AUTHORIZED USES OF REVENUE.—

244 (a) All tax revenues received pursuant to this section by a
 245 county imposing the tourist development tax shall be used by
 246 that county for the following purposes only:

247 1. To acquire, construct, extend, enlarge, remodel, repair,
 248 improve, maintain, operate, or promote one or more:

249 a. Publicly owned and operated convention centers, sports
 250 stadiums, sports arenas, coliseums, or auditoriums within the
 251 boundaries of the county or subcounty special taxing district in
 252 which the tax is levied;

253 b. Auditoriums that are publicly owned but are operated by
 254 organizations that are exempt from federal taxation pursuant to
 255 26 U.S.C. s. 501(c) (3) and open to the public, within the
 256 boundaries of the county or subcounty special taxing district in
 257 which the tax is levied; or

258 c. Aquariums or museums that are publicly owned and
 259 operated or owned and operated by not-for-profit organizations
 260 and open to the public, within the boundaries of the county or
 261 subcounty special taxing district in which the tax is levied;

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262 2. To promote zoological parks that are publicly owned and
 263 operated or owned and operated by not-for-profit organizations
 264 and open to the public;

265 3. To promote and advertise tourism in this state and
 266 nationally and internationally; however, if tax revenues are
 267 expended for an activity, service, venue, or event, the
 268 activity, service, venue, or event must have as one of its main
 269 purposes the attraction of tourists as evidenced by the
 270 promotion of the activity, service, venue, or event to tourists;

271 4. To fund convention bureaus, tourist bureaus, tourist
 272 information centers, and news bureaus as county agencies or by
 273 contract with the chambers of commerce or similar associations
 274 in the county, which may include any indirect administrative
 275 costs for services performed by the county on behalf of the
 276 promotion agency;

277 5. To finance beach park facilities, or beach, channel,
 278 estuary, or lagoon improvement, maintenance, renourishment,
 279 restoration, and erosion control, including construction of
 280 beach groins and shoreline protection, enhancement, cleanup, or
 281 restoration of inland lakes and rivers to which there is public
 282 access as those uses relate to the physical preservation of the
 283 beach, shoreline, channel, estuary, lagoon, or inland lake or
 284 river. However, any funds identified by a county as the local
 285 matching source for beach renourishment, restoration, or erosion
 286 control projects included in the long-range budget plan of the
 287 state's Beach Management Plan, pursuant to s. 161.091, or funds
 288 contractually obligated by a county in the financial plan for a
 289 federally authorized shore protection project may not be used or
 290 loaned for any other purpose. In counties of fewer than 100,000

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291 population, up to 10 percent of the revenues from the tourist
 292 development tax may be used for beach park facilities; ~~or~~

293 6. To acquire, construct, extend, enlarge, remodel, repair,
 294 improve, maintain, operate, or finance public facilities within
 295 the boundaries of the county or subcounty special taxing
 296 district in which the tax is levied, if the public facilities
 297 are needed to increase tourist-related business activities in
 298 the county or subcounty special district and are recommended by
 299 the county tourist development council created pursuant to
 300 paragraph (4)(e). Tax revenues may be used for any related land
 301 acquisition, land improvement, design and engineering costs, and
 302 all other professional and related costs required to bring the
 303 public facilities into service. As used in this subparagraph,
 304 the term "public facilities" means major capital improvements
 305 that have a life expectancy of 5 or more years, including, but
 306 not limited to, transportation, sanitary sewer, solid waste,
 307 drainage, potable water, and pedestrian facilities. Tax revenues
 308 may be used for these purposes only if the following conditions
 309 are satisfied:

310 a. In the county fiscal year immediately preceding the
 311 fiscal year in which the tax revenues were initially used for
 312 such purposes, at least \$10 million in tourist development tax
 313 revenue was received;

314 b. The county governing board approves the use for the
 315 proposed public facilities by a vote of at least two-thirds of
 316 its membership;

317 c. No more than 70 percent of the cost of the proposed
 318 public facilities will be paid for with tourist development tax
 319 revenues, and sources of funding for the remaining cost are

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320 identified and confirmed by the county governing board;

321 d. At least 40 percent of all tourist development tax
 322 revenues collected in the county are spent to promote and
 323 advertise tourism as provided by this subsection; and

324 e. An independent professional analysis, performed at the
 325 expense of the county tourist development council, demonstrates
 326 the positive impact of the infrastructure project on tourist-
 327 related businesses in the county; or

328 7. To finance flood mitigation projects or improvements.
 329

330 Subparagraphs 1. and 2. may be implemented through service
 331 contracts and leases with lessees that have sufficient expertise
 332 or financial capability to operate such facilities.

333 (d) The revenues to be derived from the tourist development
 334 tax may be pledged to secure and liquidate revenue bonds issued
 335 by the county for the purposes set forth in subparagraphs (a)1.,
 336 2., ~~and~~ 5., 6., and 7. or for the purpose of refunding bonds
 337 previously issued for such purposes, or both; however, no more
 338 than 50 percent of the revenues from the tourist development tax
 339 may be pledged to secure and liquidate revenue bonds or revenue
 340 refunding bonds issued for the purposes set forth in
 341 subparagraph (a)5. Such revenue bonds and revenue refunding
 342 bonds may be authorized and issued in such principal amounts,
 343 with such interest rates and maturity dates, and subject to such
 344 other terms, conditions, and covenants as the governing board of
 345 the county shall provide. The Legislature intends that this
 346 paragraph be full and complete authority for accomplishing such
 347 purposes, but such authority is supplemental and additional to,
 348 and not in derogation of, any powers now existing or later

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349 conferred under law.

350 (6) REFERENDUM.—

351 (a) ~~An~~ no ordinance enacted by any county levying the tax
 352 authorized by this section may not ~~paragraphs (3) (b) and (c)~~
 353 ~~shall~~ take effect until the ordinance levying and imposing the
 354 tax has been approved in a referendum election by a majority of
 355 the electors voting in such election in the county or by a
 356 majority of the electors voting in the subcounty special tax
 357 district affected by the tax.

358 ~~(d) In any case where a referendum levying and imposing the~~
 359 ~~tax has been approved pursuant to this section and 15 percent of~~
 360 ~~the electors in the county or 15 percent of the electors in the~~
 361 ~~subcounty special district in which the tax is levied file a~~
 362 ~~petition with the board of county commissioners for a referendum~~
 363 ~~to repeal the tax, the board of county commissioners shall cause~~
 364 ~~an election to be held for the repeal of the tax which election~~
 365 ~~shall be subject only to the outstanding bonds for which the tax~~
 366 ~~has been pledged. However, the repeal of the tax shall not be~~
 367 ~~effective with respect to any portion of taxes initially levied~~
 368 ~~in November 1989, which has been pledged or is being used to~~
 369 ~~support bonds under paragraph (3) (d) or paragraph (3) (1) until~~
 370 ~~the retirement of those bonds.~~

371 Section 2. Paragraphs (a), (b), (c), and (e) of subsection
 372 (4) of section 212.0305, Florida Statutes, are amended, and
 373 subsection (6) is added to that section, to read:

374 212.0305 Convention development taxes; intent;
 375 administration; authorization; use of proceeds.—

376 (4) AUTHORIZATION TO LEVY; USE OF PROCEEDS; OTHER
 377 REQUIREMENTS.—

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378 (a) *Consolidated government levy for convention*
 379 *development.*—

380 1. Each county that operates under a government
 381 consolidated with that of one or more municipalities in the
 382 county may impose, pursuant to an ordinance enacted by the
 383 governing body of the county, a levy on the exercise within its
 384 boundaries of the taxable privilege of leasing or letting
 385 transient rental accommodations described in subsection (3) at
 386 the rate of 2 percent of each dollar and major fraction of each
 387 dollar of the total consideration charged therefor. The proceeds
 388 of this levy shall be known as the consolidated county
 389 convention development tax.

390 2. The county shall furnish to the department, within 10
 391 days after approval of the ordinance imposing the levy, a copy
 392 of the ordinance. The effective date of imposition of the levy
 393 must be the first day of any month that is at least 60 days
 394 after enactment of the ordinance.

395 3. All consolidated county convention development moneys,
 396 including any interest accrued thereon, received by a county
 397 imposing the levy must be used in any of the following manners,
 398 although the utilization authorized in sub-subparagraph a. shall
 399 apply only to municipalities with a population of 10,000 or
 400 more:

- 401 a. To promote and advertise tourism;
 402 b. To extend, enlarge, and improve existing publicly owned
 403 convention centers in the county;
 404 c. To construct a multipurpose
 405 convention/coliseum/exhibition center or the maximum components
 406 thereof as funds permit in the county; ~~and~~

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407 d. To acquire, construct, extend, enlarge, remodel, repair,
 408 improve, or maintain one or more convention centers, stadiums,
 409 exhibition halls, arenas, coliseums, or auditoriums; and
 410 e. To finance flood mitigation projects or improvements.
 411 4. For the purposes of completion of any project under this
 412 paragraph, tax revenues and interest accrued may be used:
 413 a. As collateral, pledged, or hypothecated for projects
 414 authorized by this paragraph, including bonds issued in
 415 connection therewith; or
 416 b. As a pledge or capital contribution in conjunction with
 417 a partnership, joint venture, or other business arrangement
 418 between the county and one or more business entities for
 419 projects authorized by this paragraph.
 420 5.a. The county may designate or appoint an authority to
 421 administer and disburse such proceeds and any other related
 422 source of revenue. However, the annual budget of the authority
 423 is subject to approval of the governing body of the county.
 424 b. Except as otherwise provided by law, one-half of the
 425 proceeds of the tax which are collected within a municipality
 426 the government of which is not consolidated with that of the
 427 county must, at the request of the governing body of the
 428 municipality, be remitted to the municipality. The revenue
 429 remitted to a municipality under this sub-subparagraph may be
 430 used by the municipality only for the purposes and in the manner
 431 authorized in this paragraph, but the municipality may enter
 432 into an interlocal agreement with the county or with any other
 433 municipality in the county to use such revenue to jointly
 434 finance any project authorized by this paragraph. This sub-
 435 subparagraph does not apply to the distribution to the county of

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436 any convention development tax revenues necessary to repay the
 437 principal of or the interest on any bonds issued under sub-
 438 subparagraph 4.a. before May 29, 1984. Notwithstanding this sub-
 439 subparagraph, if the governing body of such a municipality
 440 adopts a resolution stating that the municipality is unable to
 441 use such revenue for any purpose authorized in this paragraph,
 442 the municipality may use the revenue to acquire and develop
 443 municipal parks, lifeguard stations, or athletic fields.
 444 6. The consolidated county convention development tax shall
 445 be in addition to any other levy imposed under this section.
 446 7. Revenues collected and returned to the county must be
 447 deposited in a convention development trust fund, which must be
 448 established by the county as a condition precedent to receipt of
 449 such funds.
 450 (b) *Charter county levy for convention development.*—
 451 1. Each county, as defined in s. 125.011(1), may impose,
 452 under an ordinance enacted by the governing body of the county,
 453 a levy on the exercise within its boundaries of the taxable
 454 privilege of leasing or letting transient rental accommodations
 455 described in subsection (3) at the rate of 3 percent of the
 456 total consideration charged therefor. The proceeds of this levy
 457 shall be known as the charter county convention development tax.
 458 2. All charter county convention development moneys,
 459 including any interest accrued thereon, received by a county
 460 imposing the levy shall be used as follows:
 461 a. Two-thirds of the proceeds shall be used to extend,
 462 enlarge, and improve the largest existing publicly owned
 463 convention center in the county.
 464 b. One-third of the proceeds shall be used to construct a

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465 new multipurpose convention/coliseum/exhibition center/stadium
 466 or the maximum components thereof as funds permit in the most
 467 populous municipality in the county.

468 c. After the completion of any project under sub-
 469 subparagraph a., the tax revenues and interest accrued under
 470 sub-subparagraph a. may be used to acquire, construct, extend,
 471 enlarge, remodel, repair, improve, plan for, operate, manage, or
 472 maintain one or more convention centers, stadiums, exhibition
 473 halls, arenas, coliseums, auditoriums, flood mitigation projects
 474 and improvements, or golf courses, and may be used to acquire
 475 and construct an intercity light rail transportation system as
 476 described in the Light Rail Transit System Status Report to the
 477 Legislature dated April 1988, which shall provide a means to
 478 transport persons to and from the largest existing publicly
 479 owned convention center in the county and the hotels north of
 480 the convention center and to and from the downtown area of the
 481 most populous municipality in the county as determined by the
 482 county.

483 d. After completion of any project under sub-subparagraph
 484 b., the tax revenues and interest accrued under sub-subparagraph
 485 b. may be used, as determined by the county, to operate an
 486 authority created pursuant to subparagraph 4. or to acquire,
 487 construct, extend, enlarge, remodel, repair, improve, operate,
 488 or maintain one or more convention centers, stadiums, exhibition
 489 halls, arenas, coliseums, auditoriums, golf courses, or related
 490 buildings and parking facilities in the most populous
 491 municipality in the county.

492 e. For the purposes of completion of any project pursuant
 493 to this paragraph, tax revenues and interest accrued may be

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494 used:

495 (I) As collateral, pledged, or hypothecated for projects
 496 authorized by this paragraph, including bonds issued in
 497 connection therewith; or

498 (II) As a pledge or capital contribution in conjunction
 499 with a partnership, joint venture, or other business arrangement
 500 between a municipality and one or more business entities for
 501 projects authorized by this paragraph.

502 3. The governing body of each municipality in which a
 503 municipal tourist tax is levied may adopt a resolution
 504 prohibiting imposition of the charter county convention
 505 development levy within such municipality. If the governing body
 506 adopts such a resolution, the convention development levy shall
 507 be imposed by the county in all other areas of the county except
 508 such municipality. No funds collected pursuant to this paragraph
 509 may be expended in a municipality which has adopted such a
 510 resolution.

511 4.a. Before the county enacts an ordinance imposing the
 512 levy, the county shall notify the governing body of each
 513 municipality in which projects are to be developed pursuant to
 514 sub-subparagraph 2.a., sub-subparagraph 2.b., sub-subparagraph
 515 2.c., or sub-subparagraph 2.d. As a condition precedent to
 516 receiving funding, the governing bodies of such municipalities
 517 shall designate or appoint an authority that shall have the sole
 518 power to:

519 (I) Approve the concept, location, program, and design of
 520 the facilities or improvements to be built in accordance with
 521 this paragraph and to administer and disburse such proceeds and
 522 any other related source of revenue.

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523 (II) Appoint and dismiss the authority's executive
 524 director, general counsel, and any other consultants retained by
 525 the authority. The governing body shall have the right to
 526 approve or disapprove the initial appointment of the authority's
 527 executive director and general counsel.

528 b. The members of each such authority shall serve for a
 529 term of not less than 1 year and shall be appointed by the
 530 governing body of such municipality. The annual budget of such
 531 authority shall be subject to approval of the governing body of
 532 the municipality. If the governing body does not approve the
 533 budget, the authority shall use as the authority's budget the
 534 previous fiscal year budget.

535 c. The authority, by resolution to be adopted from time to
 536 time, may invest and reinvest the proceeds from the convention
 537 development tax and any other revenues generated by the
 538 authority in the same manner that the municipality in which the
 539 authority is located may invest surplus funds.

540 5. The charter county convention development levy shall be
 541 in addition to any other levy imposed pursuant to this section.

542 6. A certified copy of the ordinance imposing the levy
 543 shall be furnished by the county to the department within 10
 544 days after approval of such ordinance. The effective date of
 545 imposition of the levy shall be the first day of any month at
 546 least 60 days after enactment of the ordinance.

547 7. Revenues collected pursuant to this paragraph shall be
 548 deposited in a convention development trust fund, which shall be
 549 established by the county as a condition precedent to receipt of
 550 such funds.

551 (c) *Special district levy for convention development.*—

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552 1. Each county which was chartered under Art. VIII of the
 553 State Constitution and which on January 1, 1984, levied a
 554 tourist advertising ad valorem tax within a special taxing
 555 district in that county may impose, pursuant to an ordinance
 556 enacted by the governing body of the county, a levy within the
 557 boundaries of such special taxing district on the exercise of
 558 the taxable privilege of leasing or letting transient rental
 559 accommodations described in subsection (3) at a rate of up to 3
 560 percent of each dollar and major fraction of each dollar of the
 561 total consideration charged therefor. The proceeds of this levy
 562 shall be known as the special district convention development
 563 tax.

564 2. The county shall designate or appoint an authority to
 565 administer and disburse the proceeds of such levy and any
 566 revenue related to the levy authorized by this paragraph. The
 567 members of such authority shall be selected from persons
 568 involved in the tourism and lodging industries doing business
 569 within such special district. Not less than a majority of the
 570 members shall be selected from persons doing business in the
 571 lodging industry. Members shall serve at the pleasure of the
 572 governing body of such county and shall serve without
 573 compensation. The annual budget of such authority shall be
 574 subject to approval of the governing body of the county. The
 575 authority shall consist of 11 members, who shall annually select
 576 a chair from among their members.

577 3. The county shall have no power to levy and impose the
 578 tourist advertising ad valorem tax in such district on or after
 579 January 1 of the year following the date of the adoption of the
 580 levy authorized in this paragraph. All special district

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581 convention development moneys, including any interest accrued
 582 thereon, received by a county imposing the special district
 583 convention development levy shall be used for the following
 584 purposes only:

585 a. To promote and advertise tourism_+
 586 b. To fund convention bureaus, tourist bureaus, tourist
 587 information centers, and news bureaus.

588 c. To finance flood mitigation projects or improvements.

589 4. The special district convention development tax shall be
 590 in addition to any other levy imposed pursuant to this section.

591 5. A certified copy of the ordinance imposing the levy
 592 shall be furnished by the county to the department within 10
 593 days after approval of such ordinance. The effective date of the
 594 levy shall be the first day of any month at least 60 days after
 595 enactment of the ordinance.

596 6. Revenues collected and returned to the county shall be
 597 deposited in a convention development trust fund, which shall be
 598 established by the county as a condition precedent to receipt of
 599 such funds.

600 (e) *Subcounty levy for convention development.*-

601 1. Each county which was chartered under Art. VIII of the
 602 State Constitution and which on January 1, 1984, levied a
 603 tourist advertising ad valorem tax within a special taxing
 604 district in that county may impose, pursuant to an ordinance
 605 enacted by the governing body of the county, a levy outside the
 606 boundaries of such special taxing district and to the northwest
 607 of State Road 415, on the exercise of the taxable privilege of
 608 leasing or letting transient rental accommodations described in
 609 subsection (3), at a rate of up to 3 percent of each dollar and

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610 major fraction of each dollar of the total consideration charged
 611 therefor. The proceeds of this levy shall be known as the
 612 subcounty convention development tax.

613 2. The county shall designate or appoint an authority to
 614 administer and disburse the proceeds of such levy and any
 615 revenue related to the levy authorized by this paragraph. The
 616 members of the authority shall be selected from persons doing
 617 business within the area in which the tax is levied. Not less
 618 than three of the members shall be selected from persons doing
 619 business in the lodging industry. Members shall serve at the
 620 pleasure of the governing body of the county and shall serve
 621 without compensation. The annual budget of the authority shall
 622 be subject to approval of the governing body of the county. The
 623 authority shall consist of seven members, who shall annually
 624 select a chair from among their members.

625 3. All subcounty convention development moneys, including
 626 any interest accrued thereon, received by a county imposing the
 627 subcounty convention development levy shall be used for the
 628 following purposes only:

629 a. To promote and advertise tourism_+
 630 b. To fund convention bureaus, tourist bureaus, tourist
 631 information centers, and news bureaus.

632 c. To finance flood mitigation projects or improvements.

633 4. The subcounty convention development tax shall be in
 634 addition to any other levy imposed pursuant to this section.

635 5. A certified copy of the ordinance imposing the levy
 636 shall be furnished by the county to the department within 10
 637 days after approval of the ordinance. The effective date of the
 638 levy shall be the first day of any month at least 60 days after

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639 enactment of the ordinance.

640 6. Revenues collected and returned to the county shall be
641 deposited in a separate convention development trust fund, which
642 shall be established by the county as a condition precedent to
643 receipt of such funds.

644 (6) REFERENDUM.—

645 (a) An ordinance enacted by any county levying the tax
646 authorized pursuant to this section may not remain in effect
647 after July 1, 2026, unless the ordinance levying the tax is
648 approved in a referendum election by a majority of the electors
649 voting in such election in the county or by a majority of the
650 electors voting in the subcounty special tax district affected
651 by the tax.

652 (b) The authority to levy and impose a tax pursuant to this
653 section expires 5 years after the date such authority was
654 approved in an election, but the authority may be renewed for
655 subsequent 5-year periods if each 5-year renewal is approved in
656 a referendum called and held pursuant this subsection.

657 (c) The governing board of the county levying the tax shall
658 place a question on the ballot at a regular or special election
659 to be held within the county, substantially as follows:

660 ...FOR the Convention Development Tax.

661 ...AGAINST the Convention Development Tax.

662 (d) If a majority of the electors voting on the question
663 approve the levy, the ordinance shall be deemed to be in effect.

664 (e) In any case where the proceeds of a tax levied pursuant
665 to this section have been pledged to secure and liquidate
666 revenue bonds or revenue refunding bonds as authorized by this
667 section, the expiration of the tax is not effective with respect

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668 to any portion of taxes initially levied before July 1, 2021,
669 which has been pledged or is being used to support bonds until
670 the retirement of those bonds.

671 Section 3. This act shall take effect July 1, 2021.

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Community Affairs Committee

Judge:

Started: 3/30/2021 3:30:16 PM

Ends: 3/30/2021 5:49:56 PM

Length: 02:19:41

3:30:15 PM Meeting has come to order
3:30:18 PM Roll call
3:30:26 PM Quorum present
3:30:33 PM Pledge of Allegiance
3:31:50 PM SB 2008 Temporarily Postpone
3:32:00 PM Take up tab 4 SB 694
3:32:12 PM Senator Rodrigues explains bill
3:32:32 PM Questions? none
3:33:02 PM Take up amendment barcode 314954
3:33:32 PM Senator Polsky explains amendment barcode 314954
3:34:27 PM Questions?
3:34:41 PM Appearance forms
3:34:54 PM Laura Reynolds, Plastics Free Initiative/ Woman Club's speaking in support
3:35:53 PM Travis Moore, Oceana speaking in support
3:36:02 PM Holly Parker Curry, Surfrider Foundation waives in support
3:36:14 PM Debate
3:36:18 PM Senator Rodrigues comments
3:36:34 PM Amendment barcode 314954 is adopted
3:36:47 PM Back on bill
3:36:50 PM Questions
3:36:52 PM Senator Cruz with question
3:37:21 PM Senator Rodrigues responds to question
3:37:36 PM Senator Powell with question
3:38:27 PM Senator Rodrigues with response to Senator Powell
3:39:00 PM Senator Powell with follow up
3:39:23 PM Senator Rodrigues responds to follow up
3:39:55 PM Appearance form
3:40:55 PM Keyna Cory, National Waste & Recycling Assn. FL Chapter speaking in support
3:42:29 PM Debate?
3:42:35 PM Senator Powell with debate
3:43:57 PM Senator Cruz with debate
3:45:10 PM Senator Rodrigues closes on bill
3:45:27 PM Roll call on SB 694
3:46:07 PM SB 694 is reported favorably
3:46:27 PM Tab 12 SB 1584
3:46:35 PM Senator Gruters explains bill
3:47:21 PM Take up amendment barcode 782478
3:47:44 PM Senator Gruters explains amendment barcode 782478
3:47:55 PM Questions on amendment
3:48:02 PM Debate? none
3:48:17 PM Senator Gruters waives close
3:48:19 PM Amendment barcode 782478 is adopted
3:48:25 PM Back on bill
3:48:28 PM Questions on bill
3:48:32 PM Appearance form
3:48:35 PM Ryan Patmintra, Zillow speaking in support
3:49:00 PM Debate, None
3:49:06 PM Senator Gruters waive close
3:49:13 PM Roll call on CS/SB 1584
3:49:18 PM CS/SB 1584 is reported favorably
3:49:36 PM Take up tab 3 SB518
3:49:51 PM Senator Diaz explains bill

3:50:17 PM Questions
3:50:25 PM Appearance form
3:50:27 PM Ray Colburn, Florida Fire Chiefs' Association waives in support
3:50:33 PM Jennifer Cook Pritt, The Florida Police Chiefs Association waives in support
3:50:47 PM Debate
3:50:52 PM Senator Diaz waives close
3:50:58 PM Roll call on SB 518
3:51:02 PM SB 518 is reported favorably
3:51:23 PM Take up tab 10 CS/SB 1330
3:51:39 PM Senator Rodriguez explains bill
3:52:05 PM Take up amendment barcode 358362
3:52:21 PM Senator Rodriguez explains amendment
3:52:29 PM Questions on amendment
3:52:50 PM Appearance form
3:52:53 PM Jeffery Sharky, Wandarel Housing waives in support
3:53:13 PM Debate
3:53:17 PM Senator Rodriguez waives close
3:53:21 PM Amendment barcode 358362 is adopted
3:53:26 PM Back on bill
3:53:28 PM Questions
3:53:34 PM Appearance form
3:53:40 PM Jefferey Sharky, Wandera Housing waives in support
3:53:56 PM Debate
3:54:00 PM Senator Rodriguez waive close
3:54:05 PM Roll call on CS/SB 1330
3:54:18 PM CS/SB 1330 reported favorably
3:54:31 PM Tab 1 SB 102
3:54:40 PM Senator Burgess explains bill
3:54:54 PM Strike all amendment barcode 260332
3:55:04 PM Senator Burgess explains amendment
3:57:25 PM Questions on amendment
3:58:27 PM Senator Hooper with question
3:58:35 PM Senator Burgess with response
3:59:07 PM Senator Hooper follow up
4:00:47 PM Senator Burgess with response
4:03:25 PM Senator Hutson with question
4:03:56 PM Senator Burgess with response
4:04:11 PM Senator Hutson with follow up
4:05:09 PM Senator Burgess with response to follow up
4:05:34 PM Senator Hutson follow up question
4:06:08 PM Senator Burgess responds to follow up
4:06:32 PM Senator Polsky with question
4:06:47 PM Senator Burgess with response Senator Polsky
4:07:28 PM Senator Polsky with follow up
4:08:31 PM Senator Burgess with response to follow up
4:08:48 PM Senator Polsky with follow up
4:09:03 PM Senator Burgess with response
4:10:06 PM Senator Polsky with follow up
4:11:08 PM Senator Burgess responds to follow up
4:12:10 PM Appearance form
4:13:09 PM John Gaurd, Office of the Attorney General speaking in support
4:14:37 PM James Young, Florida Justice Association speaking against
4:19:01 PM Rebecca O'Hara, Florida League of Cities speaking against
4:19:24 PM Debate
4:19:33 PM Senator Burgess waives close on amendment
4:19:39 PM Amendement barcode 260332 adopted
4:19:44 PM Back on bill
4:19:47 PM Questions
4:19:51 PM Appearance form
4:19:54 PM Former Attorney General Bill McCollum, US Chamber speaking in support
4:23:20 PM John Gaurd, Office of the Attorney General speaking in support
4:24:44 PM James Young, Florida Justice Association speaking against

4:25:33 PM William Large, Florida Justice Reform Institute waives in support
4:25:41 PM Ida V. Eskamoni, Florida Rising waives against
4:25:44 PM Bob McKee, Florida Association of Counties waives against
4:25:46 PM Jess M. McCarty, Miami-Dade County waives against
4:25:52 PM Rebecca O'Hara, Florida League of Cities waives against
4:25:56 PM Daniel Olson, Office of the Attorney General waives in support
4:26:08 PM Debate
4:26:10 PM Senator Hooper with debate
4:27:08 PM Senator Baxley with debate
4:27:14 PM Senator Polsky with debate
4:29:55 PM Senator Burgess closes on bill
4:33:21 PM Roll call on CS/SB 102
4:34:26 PM CS/SB 102 is reported favorably
4:34:48 PM Tab 11 CS/SB 1520
4:35:02 PM Senator Boyd explains bill
4:35:33 PM Questions
4:35:41 PM French Brown, Real Property, Probate, and Trust Law Section of the Florida Bar waives in support
4:35:55 PM Debate
4:35:59 PM Senator Boyd closes on bill
4:36:10 PM Roll call CS/SB 1520
4:36:13 PM CS/SB 1520 is reported favorably
4:36:32 PM Tab 6 CS/SB 107
4:36:42 PM Senator Berman explains bill 1070
4:37:25 PM Take up amendment barcode 516430
4:38:27 PM Senator Berman explains amendment
4:38:36 PM Questions, none
4:38:47 PM Debate
4:38:52 PM Senator Berman waive close
4:38:56 PM Amendment barcode 516430 adopted
4:39:00 PM Back on bill
4:39:02 PM Questions
4:39:06 PM Appearance forms
4:39:09 PM Martha Edenfield, The Real Property, Probate and Trust Law Section of the Florida Bar waive in support
4:39:17 PM Kenneth Pratt, Florida Bankers Association waives in support
4:39:28 PM Debate
4:39:30 PM Senator Berman waive close
4:39:36 PM Roll call on CS/SB 1070
4:39:47 PM CS/SB 1070 is reported favorably
4:40:01 PM Take up tab 2 CS/SB 268
4:40:13 PM Senator Perry explains bill
4:40:43 PM Questions
4:41:44 PM Senator Garcia with question
4:42:00 PM Senator Perry with response
4:42:07 PM Senator Garcia with follow up question
4:42:45 PM Senator Perry with response to follow up
4:43:14 PM Senator Garcia with question
4:43:24 PM Senator Perry with response
4:43:33 PM Senator Cruz with question
4:43:53 PM Senator Perry with response to Senator Cruz
4:44:33 PM Senator Powell with question
4:45:28 PM Senator Perry with response
4:45:42 PM Senator Powell with follow up
4:46:25 PM Senator Perry with response to follow up
4:46:54 PM Senator Powell with follow up question
4:47:33 PM Senator Perry with response to Senator Powell
4:47:59 PM Appearance forms
4:48:08 PM Theresa King, Florida Building Trades speaking against
4:49:11 PM Bob McCee, Florida Association of Counties speaking against
4:50:30 PM David Cullen, Sierra Club Florida speaking against
4:51:36 PM Matthew McDonald, Florida Stormwater Association speaking against
4:52:47 PM Jess M McCarty, Miami-Dade County waiving against
4:52:51 PM Diego Echeverry, Americans for Prosperity waiving in support

4:52:58 PM Christain Camara, Institute For Justice waives in support
4:53:03 PM Jorge Chamizo, Opportunity Solutions Project waive in support
4:53:14 PM Debate
4:53:18 PM Senator Hooper with debate
4:54:25 PM Senator Perry closes on bill
4:54:37 PM Roll call on CS/SB 268
4:55:21 PM CS/SB 268 is reported favorably
4:55:39 PM Take up tab 9 SB 1274
4:55:56 PM Senator Perry explains bill
4:56:09 PM Take up amendment barcode 585848
4:56:43 PM Senator Perry explains amendment
4:56:55 PM Questions on amendment
4:57:03 PM Debate?
4:57:17 PM Senator Perry waive close
4:57:21 PM Amendment barcode 585848 is adopted
4:57:26 PM Back on bill
4:57:28 PM Questions
4:57:31 PM Senator Powell with question
4:57:47 PM Senator Perry with response
4:58:17 PM Appearance forms
4:58:34 PM Jane West, 1000 Friends of Florida speaking against
4:59:45 PM David Cullen, Sierra Club Florida waives against
5:00:16 PM Kari Hebrank, Florida Home Builders waives in support
5:00:26 PM Debate
5:00:30 PM Senator Perry closes on bill
5:00:48 PM Roll call CS/SB 1274
5:00:57 PM CS/SB 1274 is reported favorably
5:01:17 PM Tab 14 SB 1944
5:01:24 PM Senator Albritton explains bill
5:02:20 PM Questions on bill
5:02:25 PM Appearance forms
5:02:29 PM Terry Deason, Florida Power and Light speaking in support
5:02:50 PM Charles A-Zdebaki, Florida Power and Lights speaking in support
5:05:37 PM Christie Mason, Lumen Technologies speaking against
5:07:19 PM Charlie Dudley, Florida Internet and Television Association speaking against
5:08:33 PM Tracy Hatch, AT&T speaking against
5:10:52 PM Debate
5:10:55 PM Senator Powell debate
5:11:26 PM Senator Albritton closes on bill
5:11:40 PM Roll call on SB 1944
5:12:38 PM SB 1944 is reported favorably
5:12:59 PM Take up tab 13 CS/SB 1876
5:13:15 PM Senator Albritton explains bill
5:14:29 PM Questions
5:14:33 PM Appearance forms
5:14:38 PM Adam Basford, FL Farm Bureau speaking in support
5:15:30 PM David Cullen, Sierra Club Florida speaking against
5:16:57 PM Jane West, 1000 friends of Florida speaking against
5:18:29 PM David Cruz, Florida League of Cities, Inc. speaking against
5:19:37 PM Brester Bevis, Associated Industries of Florida waives in support
5:19:43 PM Bob McKee, Florida Association of Counties waives against
5:19:47 PM Ida V. Eskamani, Florida Rising waives against
5:20:02 PM Gary Hunter, Association of Florida Community Developers speaking in support
5:21:21 PM Debate
5:21:27 PM Senator Powell with debate
5:22:23 PM Senator Albritton closes on bill
5:22:40 PM Roll call on SB 1876
5:23:18 PM SB 1876 is reported favorably
5:23:44 PM Take up tab 7 CS/SB 1076
5:23:57 PM Senator Brodeur explains bill
5:24:07 PM Amendment barcode 801090
5:24:24 PM Senator Brodeur explains amendment

5:25:01 PM Questions on amendment
5:25:44 PM Take up amendment to amendment by Senator Hooper
5:25:50 PM Senator Hooper explains amendment to amendment
5:26:04 PM Amendment barcode 283798 withdrawn by Senator Hooper
5:26:16 PM Questions on amendment
5:26:21 PM Appearance forms
5:26:26 PM Kari Hebrank, NUCA of Florida, FRMCA waives in support
5:26:34 PM Carol Bowen, Associated Builders and Contractors of Florida, waives in support
5:26:40 PM Debate?
5:26:51 PM Senator Brodeur closes on amendment
5:26:58 PM Amendment barcode 801090 adopted
5:27:08 PM Back on bill
5:27:11 PM Questions
5:27:15 PM Senator Cruz with question
5:27:37 PM Senator Brodeur with response
5:27:46 PM Senator Powell with question
5:28:29 PM Senator Brodeur responds to Senator Powell
5:29:16 PM Senator Powell with follow up
5:29:27 PM Senator Brodeur with response
5:30:35 PM Appearance form
5:31:05 PM Carol Bowen, Associated Builders and Contractors speaking in support
5:31:56 PM Kari Hebrank, National Utility Contractors Assc. of FL speaking in support
5:32:42 PM Ida V. Eskamani, Florida Rising speaking against
5:32:48 PM Jess McCarty, Miami-Dade County speaking against
5:33:41 PM Theresa King, Florida State Building & Construction Trades speaking against
5:34:27 PM Dr. Rich Templin, Florida AFL speaking against
5:35:06 PM Edward Briggs, American Fire Sprinkler Association - FL Chapter waive in support
5:35:27 PM Ken Willaims, representing self speaking against
5:36:12 PM Debate
5:36:15 PM Senator Cruz with debate
5:37:47 PM Senator Powell with debate
5:38:39 PM Senator Brodeur closes on bill
5:39:41 PM Roll call on CS/SB 1076
5:40:30 PM CS/SB 1076 is reported favorably
5:40:53 PM Tab 5 CS/SB 844
5:41:03 PM Senator Hooper explains bill
5:41:14 PM Strike all amendment barcode 940972
5:41:22 PM Senator Hooper explains amendment barcode 940972
5:41:43 PM Questions
5:41:46 PM Appearance form
5:41:50 PM Matt Duncagan, Florida Sheriffs Association waives in support
5:41:59 PM Debate
5:42:04 PM Senator Hooper waive close
5:42:07 PM Amendment barcode 940972 is adopted
5:42:11 PM Back on bill
5:42:14 PM Questions
5:42:16 PM Appearance form
5:42:19 PM Matt Dunagan, Florida Sheriffs Association waives in support
5:42:26 PM Debate
5:42:32 PM Senator Cruz with debate
5:42:50 PM Senator Hooper waive close
5:42:55 PM Roll call CS/SB 844
5:43:05 PM CS/SB 844 is reported favorably
5:43:24 PM Tab 15 CS/SB 1946
5:43:44 PM Senator Polsky explains bill
5:43:52 PM Amendment barcode 654046
5:44:51 PM Senator Polsky explains amendment
5:45:01 PM Questions
5:45:04 PM Appearance forms
5:45:11 PM Debate
5:45:13 PM Senator Polsky waive close
5:45:19 PM Amendment barcode 654046 is adopted

5:45:23 PM Back on bill
5:45:27 PM Questions
5:45:30 PM Rebecca O'Hara, Florida League of Cities waives in support
5:45:34 PM Bonnie Basham, Boat Owners of the United States waives in support
5:45:37 PM Joseph Salzverg, City of Hollywood waives in support
5:45:41 PM Foyt Ralston, Friends of the Ortega River waives in support
5:45:49 PM Debate
5:45:54 PM Senator Polsky Waive close
5:45:57 PM Roll call CS/SB 1946
5:46:04 PM CS/SB 1946 is reported favorably
5:46:17 PM Tab 8 CS/SB 1146
5:46:22 PM Senator Brodner explains bill
5:46:33 PM Take up amendment barcode 967590
5:46:43 PM Senator Brodeur explains amendment
5:47:25 PM Questions
5:47:29 PM Appearance form
5:47:33 PM Kari Hebrank, Florida Home Builders Association waives in support
5:47:37 PM Debate
5:47:44 PM Senator Broder waive close
5:47:50 PM Amendment barcode 967590 adopted
5:47:53 PM Questions on bill
5:47:59 PM Appearance forms
5:48:00 PM Kari Hebrank, Florida Home Builders speaking in support
5:48:14 PM Chris Dawson, FL Roofing and Sheet Metal Contractors Association waives in support
5:48:26 PM Debate on bill
5:48:31 PM Senator Brodeur waive close
5:48:35 PM Roll call on CS/SB 1146
5:48:38 PM CS/SB 1146 is reported favorably
5:49:07 PM Senator Baxley moves we adjourn
5:49:48 PM Meeting adjourn